United States Court of Appeals

for the Second Circuit

APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

77-7234

STANLEY V. TUCKER,

Plaintiff/Appellant

-v-

MECHANICS SAVINGS BANK, ET AL

Defendant/Appellees

UNITED STATES COURT OF APPEALS
FILED
AUG 12 1977
H. DANIEL FUSARO, CLERK
SECOND CIRCUIT

B/S

JOINT APPENDIX

Note: This Appendix is deemed a "joint appendix" as on January 10th, 1977 Plaintiff/Appellant served by mail on Appellees his "Designation of Record on Appeal" and as of this date no additions or requests for change have been received from the Respondents and now the Appendix is deeded "joint"

Appeal from the decision of the Hon M. J. Blumenfeld, USDC-District of Connecticut

STANLEY V. TUCKER
PLAINTIFF/APPELLANT
Box 35
Hartford, Conn 06101

PAGINATION AS IN ORIGINAL COPY

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STANLEY V. TUCKER, : C. A. NO _____

Plaintiff,

-v- : JURY TRIAL DEMAND

MECHANICS SAVINGS BANK, : OCTOBER 27th, 1975
and
GEORGE H. GILMAN, Junior,
ALBERT J. MARKS, Junior,
both doing business as
GILMAN and MARKS, and
THOMAS A. BAILEY, :

Defendants :

VERIFIED ANTI-TRUST COMPLAINT FOR INJUNCTIVE RELIEF AND MONETARY DAMAGES

* *

FIRST CAUSE OF ACTION

1. This is a civil action for damages and injunctive and damages arising under the anti-trust laws of the United States commonly known as the Sherman Act and Clayton Act and jurisdiction is conferred on this court by 28 USC 1337, and 15 USC 1, 2, 15, 22, and 26, all defendants being in interstate commerce.

2. The Jurisdiction of this court over this action is further based on the decision of the UNITED STATES SUPREME COURT in GOLDFARB v VIRGINIA, 95 S. Ct 2004, decided June 16th, 1975 and holding that Virginia attorneys and / or the State Bar and / or the County Bar were violating the anti-trust laws of the United States by establishing minimum fee schedules and thus restraining free competition, fixing prices, restraining interstate trade and creating monoplies.

3. The Jurisdiction of this Court over this action is further based on 28 USC 1331 this being an action in which the matter in controversy exceeds $10,000.00 and arises under the Constitution and laws of the United States.

A-1

4. That the MECHANICS SAVINGS BANK is regularly engaged in interstate commerce by reason of:

a. regular receipt of savings from out of state sources

b. regular participation with out of state lenders on large loans placed in Connecticut

c. regular participation in loans placed outside Connecticut

d. Regular receipt of funds from the United States Government on Veterans Administration and Federal Housing Administration insured loans.

e. Regular investment in out of state stocks and bonds

f. Purchase of supplies and equiment and materials manufactured outside of Connecticut

g. Employees regularly go to banking seminars and meetings outside of Connecticut

h. Regular recruitment of personnel from outside of Connecticut

5. That the Defendants, GEORGE H. GILMAN, Junior, ALBERT J. MARKS, Junior, GILMAN and MARKS and THOMAS A. BAILEY are engaged in interstate commerce by reason that :

a. they are involved in mortgages dealing with investment of funds received in interstate commerce.

b. They deal with mortgages for associations of persons and organizations including outside of Connecticut

c. They have employees based on information and belief recruited from outside of Connecticut

d. They purchase and use materials, supplies and equipment purchased or manufactured outside of Connecticut

e. They work regularly on mortgages insured by the Veterans Administration and Federal Housing Administration.

6. The Plaintiff is a citizen and resident of the state of Connecticut. Defendant, MECHANICS SAVINGS BANK, was specially chartered by the Connecticut General Assembly in 1861. Defendants, GEORGE H. GILMAN, Junior and ALBERT J. MARKS, Junior are law partners doing business as GILMAN and MARKS with principal office in Hartford and doing business throughout the State of Connecticut. Defendant, THOMAS A. BAILEY, is an attorney and employee of GILMAN and MARKS and employee, attorney and agent for MECHANICS SAVINGS BANK whose principal office is in Hartford.

7. The relationship between PLAINTIFF, STANLEY V. TUCKER, and the DEFENDANTS is a continuing one starting about January 1, 1969 and continuing to this date by reason of a Mortgage committment accepted from Defendant, MECHANICS SAVINGS BANK, on or about January 5th, 1969 a true copy annexed hereto and made a part of this complaint as EXHIBIT "A". That pursuant to mortgage recorded pursuant to said mortgage committment Plaintiff, STANLEY V. TUCKER, has made monthly payment of principal, interest and taxes to the Defendant, MECHANICS SAVINGS BANK from about mid 1970 to the present date the last payment being October 1975. The Defendants, GEORGE H. GILMAN, Junior, ALBERT J. MARKS, Junior, GILMAN and MARKS, and THOMAS A. BAILEY have been attorneys for the Defendant, MECHANICS SAVINGS BANK and responsible for the legal work on said mortgage from 1969 to this date.

8. That pursuant to an illegal contract or conspiracy between the Defendants all of the legal and title work was performed on said mortage by Defendants, GILMAN and MARKS and THOMAS A. BAILEY or by agents or employees of GILMAN and MARKS.

9. That prior to contacting MECHANICS SAVINGS BANK for said committment the Plaintiff had title work done on the property involved, 53 Hamilton Street, Hartford, Conn, and paid for said Title work receiving a Certificate of Title backed by his attorney's liability insurance.

10. That said mortgage committment, EXHIBIT "A", by its terms did not restrict competition or preclude competition in the choice of an attorney but after acceptance of the mortgage committment Plaintiff learned that GILMAN and MARKS monoplized all legal work on this mortgage and Plaintiff was prevented from using title work done by his own attorney and paid double for title work again done by GILMAND and MARKS and again pursuant to said secret contract or conspiracy paid triple for title work done by a title insurance company selected by the Defendants although the Title work done by Plaintiff's attorney and paid for by Plaintiff was adequately protected by liability insurance by plaintiff's attorney. All of the work done by defendant GILMAN and MARKS was paid for at minimum bar association fee schedule by the Plaintiff.

11. Plaintiff requested that the mortgage be drafted by the Defendant, MECHANICS SAVINGS BANK, or by its Loan Officers or employees at no cost to the Plaintiff as the MECHANICS SAVINGS BANK was amply staffed with personel but pursuant to said illegal contract or conspiracy the Defendants refused the request of Plaintiff and all of the mortgage drafting and preparation was done by GILMAN and MARKS and all paid for by Plaintiff at minimum fee schedules set by the Hartford County Bar Association.

12. That while the Defendants refused to allow Loan Officers or para-legals in the employ of the MECHANICS SAVINGS BANK to prepare the mortgage at no cost to the Plaintiff based on information and belief all of the mortgage preparation and drafting was done by para-legals such as legal secretaries in the employ of GILMAN and MARKS and Defendant, THOMAS A BAILEY, only attended the closing and reviewed the final mortgage papers.

13. That a resonable sum for the payment of the legal services on a time expended basis would be $100 but the Plaintiff because of said illegal conspiracy and contract actually paid out the sum of $ 776 approx.

14. That Plaintiff complied with all the requirements of the mortgage and demanded release of the morgage moneys but the defendant, GILMAN and MAKRS, pursuant to said illegal conspiracy and contract and in consideration of the monopoly of legal work on this mortgage "interpreted" the mortgage terms contrary to the General Statutes of Connecticut and and refused to release $12,600 of the

mortgage moneys so that the Defendant, MECHANICS SAVINGS BANK, could use the moneys on other projects and for other purposes. That over the years Plaintiff repeatedly demanded release of said moneys due June 16th, 1970 and repeatedly pursuant to said illegal contract and conspiracy the Defendants refused the last refusal being September 1975.

15. That normal business profits on construction, a high type of risk, are 15% commonly accepted and Plaintiff claims as damages the $12,600 in moneys illegally withheld and the sum of 15% per annum compounded annually from June 1970 to the date of payment by the Defendants.

16. That recent years have involved extremely high inflation throughout the United States and especially in Connecticut with cutting off from property owners almost all sources of normal funds for construction, re-financing, and consolidation and payment of normal business debts and the $12,600 is urgently needed by the Plaintiff to consolidate debts.

17. That Plaintiff has continually suffered damages from June 1970, the date release of moneys was required by the mortgage to this date and continuing into the future by reason of denial of the release of the $12,600 by inability to apply said funds to new construction when costs and interest were low, by lack of the 15% profit normal to such business and by lack of said moneys and profits thereon for use in payment of debts, consolidation of bills, and discharge of critical business

obligations. An injunction is required because lacking the funds of $12,600 retained by the Mechanics Savings Bank the plaintiff may not be able to consolidate and dispose of all of his debts and thus may be exposed to judgments and / or liens and may have one or more of his properties subjected to foreclosure sale with a complete loss of all of his equity.

18. The above acts by the Defendants caused Plaintiff to suffer emotional distress and endure mental suffering.

WHEREFORE PLAINTIFF prays for relief as follows:

1. A Temporary Preliminary and Permanent Injunction restraining the defendants and each of them from stifling competiton, restraining trade and creating monopolies in the fixing of prices, and in the selection of personnel whether attorneys, para-legals or other for the preparation of mortgages and doing of title work and from any delay in release of the $12,600.
2. Damages of $ 676.00 for excessive legal costs billed.
3. Damages of $12,600 for moneys retained.
4. Interest at 15% on the $12,600 plus the $ 676.00 in excessive legal costs compounded annually from June 1970
5. All of the above damages to be trebled.
6. The sum of $200,000 for mental suffering and emotional distress
7. The sum of $500,000 for lack of use of the moneys.
8. Costs of suit and reasonable attorneys fees.
9. Such further and added relief as to this Court may be proper.

SECOND CAUSE OF ACTION

1. The jurisdiction of this court is based upon its pendant jurisdiction over relevant and complementary state law causes of action.

2. This action is based on the CONNECTICUT ANTI-TRUST ACT and specifically upon General Statutes 35-34 and 35-35 permitting treble damages.

3. Plaintiff repeats and re-alleges Paragraphs six through eighteen of his First Cause of Action the same as if set forth herein verbatim.

4. The said acts of Defendants in refusing to accept the title work already completed by Plaintiff's attorney and fully paid for and in refusing to deal with Plaintiff's attorney were in violation of G. S. 52-28 b.

WHEREFORE PLAINTIFF prays for relief as follows:

1. Plaintiff repeats and re-alleges Para one through nine of his Prayer For Relief of His First Cause of Action the same as if set forth here verbatim.

VERIFICATION

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss

The undersigned being duly sworn deposes and says that the foregoing allegations are true and correct to the best of my information, knowledge and belief.

Stanley V. Tucker

STANLEY V. TUCKER

Sworn to and subscribed to before me.

Abel M. Tangarone

Notary Public

My commission expires on

My Commission Expires Mar. 31, 1979

dated October November 4th, 1975

JURY TRIAL DEMAND

Pursuant to Rule 38 FRCP Plaintiff demands a jury trial on all issues so triable.

A7A

MECHANICS SAVINGS BANK

ESTABLISHED 1861

80 PEARL STREET
HARTFORD, CONNECTICUT 06101

January 2, 1969

Mr. Stanley V. Tucker
130 Newton Street
Hartford, Connecticut 06106

Re: 51-53 Hamilton Street
Hartford, Connecticut

Dear Sir:

The Mechanics Savings Bank will consider a loan of $64,000. on the 8 unit apartment building to be built at the above address subject to the following conditions:

1. Rate - 8%
2. Term - 25 years
3. Collect taxes
4. There will be no payments on the principal of the mortgage in addition to normal contractual principal payments for the first ten years. Principal payments in addition to regular payments after the first ten years will be subject to a fee of one per cent (1%) of the additional payment.
5. Personal signatures.
6. Chattel mortgage on all appliances.
7. Construction will be in accordance with plans and specifications left with the bank. Final plans, specifications and parking subject to Mechanics Savings Bank approval.
8. Construction payments will be advanced on the basis of 80% of full loan.
9. The final 20% will be paid after completion of the building, all of the construction funds have been advanced, and 6 of the units have been rented and occupied under a lease which has a term of at least one year for an annual income of at lease $9,720., and a full release of liens has been furnished.

EXHIBIT "A"

A8

Mr. Stanley V. Tucker January 2, 1969

10. Title policy from a company acceptable to this bank.
11. It is understood that if the Mechanics Savings Bank fails to commit the $64,000. for the terms as stated above, or if the loan is committed and closed on the above terms the commitment fee of 1% or $640. which has been deposited with the Mechanics Savings Bank will be returned. If the Mechanics Savings Bank does commit according to the terms as outlined and the commitment is not accepted or used within the specified time, the bank will consider the $640. deposit as a fee earned and it will be retained.

If the foregoing terms are acceptable to you, please sign the copy and return to us with your check for $640. on or before the expiration date of January 9, 1969.

Sincerely yours,

Walter J. Curylo
Assistant Treasurer
Mortgage Loan Department

WJC:ma

ACCEPTED:

Stanley V. Tucker

A9

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	C. A. NO H 75- 359
-v-	:	December 10th, 1976
MECHANICS SAVINGS BANK ET AL	:	FIRST AMENDED COMPLAINT

Pursuant to Court order of November 18th, 1976 granting permission to amend his complaint the Plaintiff files below his First Amended Complaint.

FIRST CAUSE OF ACTION

1. This is a civil action for damages and injunctive relief arising under the anti-trust laws of the United States commonly known as The Sherman Act and Clayton Act and jurisdiction is conferred on this court by 28 USC 1337 and 15 USC 1, 2, 15, 22, and 26, all defendants being in interstate commerce.

2. The jurisdiction of this court over this action is further based on the decision of the UNITED STATES SUPREME COURT in GOLDFARB v VIRGINIA, 95 S. Ct 2004, decided June 16th, 1975 and holding that Virginia attorneys and or the State Bar and / or the County Bar were violating the anti-trust laws of the United States by establishing minimum fee schedules and thus restraining free competition fixing prices, restraining interstate trade and creating monoplies.

3. The Jurisdiction of this court over this action is further based on 28 USC 1331 this being an action in which the matter in controversy exceeds $10,000.00 and arises under the Constitution and laws of the United States.

B1

4. That the MECHANICS SAVINGS BANK is regularly engaged in interstate commerce by reason of:

a. regular receipt of savings from out of state sources

b. regular participation with out of state lenders on large loans placed in Connecticut

c. regular participation in loans placed outside Connecticut

d. Regular receipt of funds from the United States Government on Veterans Administration and Federal Housing Administration insured loans.

e. Regular investment in out of state stocks and bonds

f. Purchase of supplies and equiment and materials manufactured outside of Connecticut

g. Employees regularly go to banking seminars and meetings outside of Connecticut

h. Regular recruitment of personnel from outside of Connecticut

5. That the Defendants, GEORGE H. GILMAN, Junior, ALBERT J. MARKS, Junior, GILMAN and MARKS and THOMAS A. BAILEY are engaged in interstate commerce by reason that :

a. they are involved in mortgages dealing with investment of funds received in interstate commerce.

b. They deal with mortgages for associations of persons and organizations including outside of Connecticut

c. They have employees based on information and belief recruited from outside of Connecticut

d. They purchase and use materials, supplies and equipment purchased or manufactured outside of Connecticut

e. They work regularly on mortgages insured by the Veterans Administration and Federal Housing Administration.

B2

6. The Plaintiff is a citizen and resident of the state of Connecticut. Defendant, MECHANICS SAVINGS BANK, was specially chartered by the Connecticut General Assembly in 1861. Defendants, GEORGE H. GILMAN, Junior and ALBERT J. MARKS, Junior are law partners doing business as GILMAN and MARKS with principal office in Hartford and doing business throughout the State of Connecticut. Defendant, THOMAS A. BAILEY, is an attorney and employee of GILMAN and MARKS and employee, attorney and agent for MECHANICS SAVINGS BANK whose principal office is in Hartford.

7. The relationship between PLAINTIFF, STANLEY V. TUCKER, and the DEFENDANTS is a continuing one starting about January 1, 1969 and continuing to this date by reason of a Mortgage committment accepted from Defendant, MECHANICS SAVINGS BANK, on or about January 5th, 1969 a true copy annexed hereto and made a part of this complaint as EXHIBIT "A". That pursuant to mortgage recorded pursuant to said mortgage committment Plaintiff, STANLEY V. TUCKER, has made monthly payment of principal, interest and taxes to the Defendant, MECHANICS SAVINGS BANK from about mid 1970 to the present date the last payment being December 1976 less several payments in 1976. The Defendants, GEORGE H. GILMAN, Junior, ALBERT J. MARKS, Junior, GILMAN and MARKS, and THOMAS A. BAILEY have been attorneys for the Defendant, MECHANICS SAVINGS BANK and responsible for the legal work on said mortgage from 1969 to this date.

8. That pursuant to an illegal contract or conspiracy between the Defendants all of the legal and title work was performed on said mortage by Defendants, GILMAN and MARKS and THOMAS A. BAILEY or by agents or employees of GILMAN and MARKS.

B3

9. That prior to contacting MECHANICS SAVINGS BANK for said committment the Plaintiff had title work done on the property involved, 53 Hamilton Street, Hartford, Conn, and paid for said Title work receiving a Certificate of Title backed by his attorney's liability insurance.

10. That said mortgage committment, EXHIBIT "A", by its terms did not restrict competition or preclude competition in the choice of an attorney but after acceptance of the mortgage committment Plaintiff learned that GILMAN and MARKS monoplized all legal work on this mortgage and Plaintiff was prevented from using title work done by his own attorney and paid double for title work again done by GILMAND and MARKS and again pursuant to said secret contract or conspiracy paid triple for title work done by a title insurance company selected by the Defendants although the Title work done by Plaintiff's attorney and paid for by Plaintiff was adequately protected by liability insurance by plaintiff's attorney. All of the work done by defendant GILMAN and MARKS was paid for at minimum bar association fee schedule by the Plaintiff.

11. Plaintiff requested that the mortgage be drafted by the Defendant, MECHANICS SAVINGS BANK, or by its Loan Officers or employees at no cost to the Plaintiff as the MECHANICS SAVINGS BANK was amply staffed with personel but pursuant to said illegal contract or conspiracy the Defendants refused the request of Plaintiff and all of the mortgage drafting and preparation was done by GILMAN and MARKS

and all paid for by Plaintiff at minimum fee schedules set by the Hartford County Bar Association.

12. That while the Defendants refused to allow Loan Officers or para-legals in the employ of the MECHANICS SAVINGS BANK to prepare the mortgage at no cost to the Plaintiff based on information and belief all of the mortgage preparation and drafting was done by para-legals such as legal secretaries in the employ of GILMAN and MARKS and Defendant, THOMAS A BAILEY, only attended the closing and reviewed the final mortgage papers.

13. That a resonable sum for the payment of the legal services on a time expended basis would be $100 but the Plaintiff because of said illegal conspiracy and contract actually paid out the sum of $ 776 approx.

14. That Plaintiff complied with all the requirements of the mortgage and demanded release of the morgage moneys but the defendant, GILMAN and MAKRS, pursuant to said illegal conspiracy and contract and in consideration of the monopoly of legal work on this mortgage "interpreted" the mortgage terms contrary to the General Statutes of Connecticut and and refused to release $12,800 of the mortgage moneys so that the Defendant, MECHANICS SAVINGS BANK, could use the moneys on other projects and for other purposes. That over the years Plaintiff repeatedly demanded release of said moneys due June 16th, 1970 and repeatedly pursuant to said illegal contract and conspiracy the Defendants refused the last refusal being September 1975.

15. That normal business profits on construction, a high type of risk, are 15% commonly accepted and Plaintiff claims as damages the $12,800 in moneys illegally withheld and the sum of 15% per annum compounded annually from June 1970 to the date of payment by the Defendants.

16. That recent years have involved extremely high inflation throughout the United States and especially in Connecticut with cutting off from property owners almost all sources of normal funds for construction, re-financing, and consolidation and payment of normal business debts and the $12,800 is urgently needed by the Plaintiff to consolidate debts.

17. That Plaintiff has continually suffered damages from June 1970, the date release of moneys was required by the mortgage to this date and continuing into the future by reason of denial of the release of the $12,800 by inability to apply said funds to new construction when costs and interest were low, by lack of the 15% profit normal to such business and by lack of said moneys and profits thereon for use in payment of debts, consolidation of bills, and discharge of critical business obligations. An injunction is required because lacking the funds of $12,800 retained by the Mechanics Savings Bank the plaintiff may not be able to consolidate and dispose of all of his debts and thus may be exposed to judgments and / or liens and may have one or more of his properties subjected to foreclosure sale with a complete loss of all of his equity and on Nov 3, 1976 filed a Petition under Chapter XII of the Bankruptcy Laws to prevent losing all of his properties.

18. The above acts by the Defendants caused Plaintiff to suffer emotional distress and endure mental suffering.

19. That on January 5th, 1969 Plaintiff accepted the mortgage commitment Ex A annexed to complaint, without any knowledge or information that as a tying in product Plaintiff would be required to have all title and legal work done or duplicated by Gilman and Marks, or their employees or staff. That on acceptance of the commitment Plaintiff paid a fee of $640 in accordance with paragraph 11 of said commitment letter. The purpose of the $640 fee as explained to Plaintiff by the Mechanics Savings Bank was to ...."prevent your shopping around and getting a better deal somewhere else..." That after accepting the commitment, and payment of the fee for the first time Plaintiff was informed by Mechanics Savings Bank that Gilman and Marks monopolized all legal and title work and that said work must be done over at added costs and all paid for by Plaintiff. By the time Plaintiff received this information Plaintiff was helpless in the economic power of the Mechanics Savings Bank and could only go elsewhere at great financial losses for following reasons:

1. The fee of $640 would be lost if Plaintiff went to another bank
2. Work in process on construction required money to pay bills and there was insufficient time to go through time consuming mortgage applications with other banks without suffering great economic losses

20. That on or before June 15th, 1970 Defendants and each of them entered into a secret contract or conspiracy to deny to Plaintiff his final mortgage release of $12,800 and to give to Plaintiff artificial or false or fraudulent reason for said denial. The reason for the denial as given to Plaintiff on June 15th, 1970 was "The Mechanics Savings Bank is on the New Haven Computer and the New Haven Computer closes at 3 pm."

That said conspiracy was a continuing one continuing even to this date and never repudiated by any of the co-conspirators and that pursuant to said conspiracy the following overt acts were performed to cause injury to the Plaintiff:

a. On or before June 15th, 1970 Thomas A. Bailey in concealment and secrecy from Plaintiff issued to the Mechanics Savings Bank a legal opinion to prevent the release of the final $12800 on grounds contrary to Connecticut General Statute 49-3

b. During the fall of 1970 Thomas A. Bailey again secretly confirmed said legal opinion to Mechanics Savings Bank

c. Based on said opinion on June 15, 1970 Mechanics Savings Bank refused to make the release of $12,800 and gave to Plaintiff a false and fraudulent reason

d. Plaintiff repeatedly demanded the release and was refused by the Mechanics Savings bank acting on basis of said legal opinion on June 15, 1970, on July 3, 1970, on October 9th, 1970, on June 10th, 1971, on January 12th, 1972, on March 15th, 1972 and on Sept 19th, 1975.

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21. That the permanent mortgage issued to Plaintiff by the Mechanics Savings Bank started June 15th, 1970 and runs for 25 years to June 15th, 1995 and as a result of said conspiracy and the acts performed pursuant thereto the Mechanics Savings Bank has the benefit of the use of the $12,800 and the Plaintiff is denied the benefit of the use of the $12,800 for each year from 1970 to and including 1995.

22. That Gilman and Marks and Thomas A. Bailey were paid in full for all legal work and services by Plaintiff and owed to Plaintiff a duty to adequately protect his interests under the Canon of Ethics and duties for attorneys but neglected and breached said duties by acts of concealed fraud to cause injury as set forth in this complaint.

23. That at the time of the first refusal to release the $12,800 on June 15th, 1970 the damages were unknown or speculative and Plaintiff could not reasonably have been expected to foresee the damages and file suit. The damages claimed did not become definitive and known precisely for purposes of suit until the dates set out below:

a. Subcontractor claims and litigation 1974

b. Loss of Option 198 Wethersfield
Lost rental profit running through 1995

c. Creditor problems with damages to business credit reputation 1974

d. Tax problems causing foreclosures with loss of large equities 1975

e. Emotional Distress & Mental Suffering 1975

f. Bankruptcy proceedings 1976-1977

B9

WHEREFORE PLAINTIFF prays for relief as follows:

1. A Temporary Preliminary and Permanent Injunction restraining the defendants and each of them from stifling competiton, restraining trade and creating monopolies in the fixing of prices, and in the selection of personnel whether attorneys, para-legals or other for the preparation of mortgages and doing of title work and from any delay in release of the $12,800.
2. Damages of $ 676.00 for excessive legal costs billed.
3. Damages of $12,800 for moneys retained.
4. Interest at 15% on the $12,600 plus the $ 676.00 in excessive legal costs compoundedannually from June 1970
5. Compensatory damages of Two Million Dollars
6. The sum of $200,000 for mental suffering & emotional distress
7. Punitive damages of Five Million Dollars
8. All of the above damages to be trebled under Title 15 USC 15.
9. Costs of suit and reasonable attorneys fees.
10. Such further and added relief as to this Court may be proper.

SECOND CAUSE OF ACTION - VIOLATION OF CONN. ANTI-TRUST ACT

1. The jurisdiction of this court is based upon its pendant jurisdiction over relevant and complementary state law causes of action.
2. This action is based on the CONNECTICUT ANTI-TRUST ACT and specifically upon General Statutes 35-34 and 35-35 permitting treble damages.

B10

3. Plaintiff repeats and re-alleges Paragraphs six through twenty-three of his First Cause of Action the same as if set forth herein verbatim.

4. The said acts of Defendants in refusing to accept the title work already completed by Plaintiff's attorney and fully paid for and in refusing to deal with Plaintiff's attorney were in violation of G. S. 52-28 b.

WHEREFORE PLAINTIFF prays for relief as follows:

1. Plaintiff repeats and re-alleges Para one through ~~ten~~ of his Prayer For Relief of His First Cause of Action the same as if set forth here verbatim.

THIRD CAUSE OF ACTION - BREACH OF CONTRACT

1. The jurisdiction of this court is based on its pendant jurisdiction over relevant and complementary state law causes of action.

2. The plaintiff is resident and citizen of the State of Connecticut and Defendant, MECHANICS SAVINGS BANK, was specially chartered by the Connecticut General Assembly in 1861.

3. That Plaintiff, STANLEY V. TUCKER, accepted a mortgage committment from Defendant, MECHANICS SAVINGS BANK, a true copy annexed to First Cause of Action as EX "A", and pursuant to said commi tment entered into a construction and permanent mortgage with effective date of June 15th, 1970 and continuing in existance with regular monthly payments to about June 15th, 1995. That pursuant to said mortgage contract Plaintiff was to erect a small apartment building at 53 Hamilton Street,

Hartford and Defendant was to release to Plaintiff the sum of $64,000 and Plaintiff completed and complied with all obligations and requirements on his part but Defendant, MECHANICS SAVINGS BANK, failed to release the last $12,800 of the mortgage comitment and continues to this date to breach said mortgage contract by continued refusals to release the last $12,800.

WHEREFORE PLAINTIFF prays for relief as follows:

Plaintiff repeats and realleges Para One through Ten of his Prayer for Relief of the First Cause of Action the same as if set forth herein verbatim.

VERIFICATION

STATE OF CONNECTICUT)
) ss
COUNTY OF HARTFORD)

The undersigned being duly sworn deposes and says that the foregoing allegation of the First, Second and Third Causes of Action are true and correct to the best of my information, knowledge and belief.

s/
STANLEY V. TUCKER

Sworn to and subscribed to before me.

Executed at Hartford, Conn this 13th of December 1976

s/ SELIG GOURSON
NOTARY PUBLIC My commission expires on April 1981

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MECHANICS SAVINGS BANK

ESTABLISHED 1861

80 PEARL STREET
HARTFORD, CONNECTICUT 06101

January 2, 1969

Mr. Stanley V. Tucker
130 Newton Street
Hartford, Connecticut 06106

Re: 51-53 Hamilton Street
Hartford, Connecticut

Dear Sir:

The Mechanics Savings Bank will consider a loan of $64,000. on the 8 unit apartment building to be built at the above address subject to the following conditions:

1. Rate - 8%
2. Term - 25 years
3. Collect taxes
4. There will be no payments on the principal of the mortgage in addition to normal contractual principal payments for the first ten years. Principal payments in addition to regular payments after the first ten years will be subject to a fee of one per cent (1%) of the additional payment.
5. Personal signatures.
6. Chattel mortgage on all appliances.
7. Construction will be in accordance with plans and specifications left with the bank. Final plans, specifications and parking subject to Mechanics Savings Bank approval.
8. Construction payments will be advanced on the basis of 80% of full loan.
9. The final 20% will be paid after completion of the building, all of the construction funds have been advanced, and 6 of the units have been rented and occupied under a lease which has a term of at least one year for an annual income of at lease $9,720., and a full release of liens has been furnished.

EXHIBIT "A"

B13

Mr. Stanley V. Tucker January 2, 1969

10. Title policy from a company acceptable to this bank.
11. It is understood that if the Mechanics Savings Bank fails to commit the $64,000. for the terms as stated above, or if the loan is committed and closed on the above terms the commitment fee of 1% or $640. which has been deposited with the Mechanics Savings Bank will be returned. If the Mechanics Savings Bank does commit according to the terms as outlined and the commitment is not accepted or used within the specified time, the bank will consider the $640. deposit as a fee earned and it will be retained.

If the foregoing terms are acceptable to you, please sign the copy and return to us with your check for $640. on or before the expiration date of January 9, 1969.

Sincerely yours,

Walter J. Curylo
Assistant Treasurer
Mortgage Loan Department

WJC:ma

ACCEPTED:

Stanley V. Tucker 1/5/69

EXHIBIT "A"

B14

DEC 13 10 15 AM '75
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	
vs.	CIVIL ACTION NO. H75-359
MECHANICS SAVINGS BANK, GEORGE H. GILMAN, ALBERT J. MARKS, both doing business as Gilman and Marks, and THOMAS A. BAILEY:	

JUDGMENT

The above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge, of the cross Motions for Summary Judgment filed by the Parties; and,

After a full hearing on the matter, the Court filed its Memorandum of Decision denying the Plaintiff's Motion for Summary Judgment and granting Judgment in favor of the Defendants on the Plaintiff's antitrust claims, and dismissing the Plaintiff's claim for breach of contract for lack of jurisdiction but without prejudice to the Plaintiff's right to bring such action as he may deem advisable in an appropriate forum:

It is therefore accordingly ORDERED and ADJUDGED that the Plaintiff, Stanley Tucker's Motion for Summary Judgment be and hereby is denied; and,

It is further ORDERED and ADJUDGED that the Plaintiff's claim for breach of contract be and is hereby dismissed without prejudice to his right to bring such action as he may deem advisable in an appropriate forum; and,

C1

It is further accordingly ORDERED and ADJUDGED that Summary Judgment enter and hereby does enter for all of the Defendants with respect to the Plaintiff's antitrust claims, with costs to the Defendants.

Dated at Hartford, Connecticut, this 14th day of December, 1976.

SYLVESTER A. MARKOWSKI, Clerk
United States District Court

By: William D. Looney
Deputy-In-Charge

C2

U.S. DISTRICT COURT
D. CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	
	:	
v.	:	CIVIL NO. H-75-359
	:	
MECHANICS SAVINGS BANK, ET AL	:	

RULING ON PENDING MOTIONS

I.

In this civil action for damages and injunctive relief, the plaintiff, acting pro se, alleges that he has been the victim of excessive charges for fees that were fixed by the defendants pursuant to a conspiracy in violation of the federal antitrust laws. 15 U.S.C. § 1 provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . . ."

The basis of the claim set forth in plaintiff's complaint, as amended,[1/] is that the defendant bank, from which he obtained a loan to be secured by a mortgage on property he owned, charged him an excessive amount for the cost of preparing the mortgage to secure that loan. The amount of those charges, he alleges, were fixed in accordance with a schedule

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1/ The amendment to the complaint is nothing more than a restatement of the same claims as set forth in the original complaint.

4

D1

of minimum fees which were established by the Hartford County Bar Association of which the three individual defendants were members. They are all partners in the law firm of Gilman and Marks. They searched the title to the property to be mortgaged and drafted the mortgage. Their charge was $473.75 for legal services and $325.50 for necessary disbursements.[2/]

The transaction between the plaintiff and the bank had its inception on January 5, 1969, when the bank gave the plaintiff a written commitment for a construction loan to be used to pay for the erection of an 8-unit apartment building on land of the plaintiff known as 51-53 Hamilton Street, Hartford, Connecticut. This was to be mortgaged to the bank to secure the loan.[3/]

In addition to other defenses, the individual defendants have all pleaded the statute of limitations and have moved for summary judgment on that defense. The defendant bank moves to dismiss on the same ground. The pleadings, answers to interrogatories, together with affidavits, show that there is no genuine issue as to any material fact bearing upon the

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2/ The disbursements were:

Property survey	$127.50
Title insurance	153.00
Fee to the Secretary of the State	3.00
The Town Clerk	42.00

3/ The agreement provided for a commitment fee to the bank of $640 (one per cent of the amount committed). Exhibit "A" attached to complaint.

issue raised by the defense of the statute of limitations, Rule 56(c), Fed. R. Civ. P. The parties have been given ample opportunity to comment on these documents. As arguments have been had thereon, defendants' motions shall be considered together as for summary judgment pursuant to Rule 12(b).

It is undisputed that the fees of which the plaintiff complains were paid by him on May 19, 1969, pursuant to his written authorization given at the closing of the loan. That is when the alleged illegal conduct of the defendants had an adverse impact upon him, and that is the date upon which his cause of action for damages on account of such conduct accrued to him.

The plaintiff waited too long before bringing this suit. It was not commenced until November 5, 1975. This was more than six years after his cause of action arose. In applying the four-year federal statute of limitations to an antitrust suit, the Supreme Court in Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 (1971), said at 338:

> "The basic rule is that damages are recoverable under the federal antitrust acts only if suit therefor is 'commenced within four years after the cause of action accrued,' 15 U.S.C. § 15b . . . ."

The statute[4/] is dispositive of the federal claim against all defendants, and accordingly that claim is dismissed.

4/ 15 U.S.C. § 15b reads:

> "Any action to enforce any cause of action under sections 15 or 15a of this title shall be

What remains in his complaint is a cause of action for breach of contract, but this presents a state law issue. Entirely apart from his antitrust claim, the plaintiff alleges that the defendant bank breached its commitment agreement. The mutual provisions of that contract were not within the proscription of the Sherman Act. Whatever merit there may be to his claim that the bank breached its agreement with him by failing to make the final advance of $12,800, the theory that the breach was a consequence of the antitrust conduct of all defendants in overcharging him for counsel fees does not stand up under any analysis.[5/] That was a separate economic transaction without regard to the alleged illegal fees of counsel. Cf. Kelly v. Kosuga, 358 U.S. 516 (1959).

4/ cont'd

> forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section and sections 15a and 16 of this title shall be revived by said sections."

5/ But even if that obvious lack of connection between the breach of contract and the amount of fees he paid were to be ignored, the plaintiff would be in no better position to meet the defense that his claim is barred by the statute of limitations. By his own account in his answer to Interrogatory No. 38 of the bank, he states that the $12,800 payment should have taken place on March 3, 1970, and again on June 15, 1970. In answer to Interrogatory No. 23 he states that demand was made for that payment on March 3, 1970. See also, Answer to Interrogatory No. 41 of Mechanics Savings Bank: "I claim the money was due me March 3, 1970 the date of occupancy under the Certificate of Occupancy from the City of Hartford Building Department."

Since his claim of a breach of contract by the bank "is not founded on a law of the United States in any such sense as to bring the suit within the jurisdiction of the federal court," St. Paul, M & M Ry. v. St. Paul & No. Pac. RR, 68 F. 2, 13 (8th Cir. 1895), aff'd by consent, 18 S. Ct. 946, 42 L.Ed. 1212 (1897), the plaintiff's reliance on 28 U.S.C. § 1331 for federal jurisdiction is misplaced.

Pendent Jurisdiction

The mere fact that the plaintiff may have suffered damages from a breach of contract by the bank does not afford an adequate basis for affording him a remedy in a federal court. The interest in conserving federal resources for litigation in which significant federal questions are at stake does not favor enlarging the court's jurisdiction to provide an alternative forum for litigating ordinary contract claims. Furthermore, his cause of action for breach of contract and his antitrust claim are not "derived from a common nucleus of operative fact." United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966). "[R]ecognition of a federal court's wide latitude to decide ancillary questions of state law does not imply that it must tolerate a litigant's effort to impose on it what in effect is only a state law case." Id. at 727.

As a matter of discretion I am unwilling to exercise pendent jurisdiction over the plaintiff's contract claim founded on state law, cf. T.B. Harms Co. v. Eliscu, 339 F.2d 823 (2d Cir. 1964), cert. denied, 381 U.S. 915 (1965). For, as Judge Friendly noted in a comparable situation in McFaddin Express, Incorporated v. Adley Corporation, 346 F.2d 424, at 427 (2d Cir. 1965), cert. denied, 382 U.S. 1026 (1966):

> "'Where the federal element which is the basis for jurisdiction is disposed of early in the case, as on the pleadings, it smacks of the tail wagging the dog to continue with a federal hearing of the state claim.'"

citing ALI, Study of the Division of Jurisdiction Between State and Federal Courts 59 (Tent. Draft No. 3, 1965). See also Hart and Wechsler, The Federal Courts and the Federal System 808 (1953).

Accordingly, the plaintiff's motion for summary judgment is denied. Judgment shall be entered for all defendants on the plaintiff's antitrust claims, and the remaining claim of the plaintiff for breach of contract by the bank is dismissed for lack of jurisdiction without prejudice to the plaintiff's right to bring such action as he may deem advisable in an appropriate forum.[6/]

It is SO ORDERED.

Dated at Hartford, Connecticut, this 23rd day of November, 1976.

D6

M. Joseph Blumenfeld
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
MAY 17 12 20 PM '76
U.S. DISTRICT COURT
HARTFORD, CONN.

STANLEY V. TUCKER,
Plaintiff

-v-

MECHANICS SAVINGS BANK ET AL
Defendant

C. A. No H 75-359

MOTION FOR LEAVE TO FILE AMENDMENT TO COMPLAINT, BRIEF, AND PROPOSED AMENDMENT.

May 10th, 1976

* * * * * * * * * * * * * *

Pursuant to Rule 15b FRCP Plaintiff moves the Court at its first available motion day for leave to file amendment to his complaint on grounds Defendanst have filed special defenses of statute of limitations and Plaintiff desires to Plead fraudulent concealment and the speculative nature of the damages claimed as of the first overt act of the conspiracy complained of in his complaint. In addition, under this Court's pendant jurisdiction over related state claims between the same parties Plaintiff desires to add a cause of action for breach of contract.

Stanley V. Tucker
STANLEY V. TUCKER

FILED
MAY 18 4 41 PM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

BRIEF

FRCP RULE 15 b : "A party may amend.... after a responsive pleading. only by leave of court"

In this action all defensants have filed Answers and leave of the Court is mandatory to amend the complaint.

Lloyd v United Liquors Corp 203 F 2d 7896th C. A. 1953

"Amendments to pleadings are to be allowed with liberality. Plaintiff in an anti-trust action should have been granted leave to amend his complaint at the hearing on motions to dismiss or for summary judgment, in order to avoid entry of dismissal or summary judgment."

Lloyd v United Lieuors Corp. 203 F 2d 789 CA 6th 1953

Respectfully Submitted,
Stanley V Tucker
STANLEY V. TUCKER

E1

MAR 29 11 23 AM '76
CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	:	C.A. No H 75-359
-v-	:	March 29th, 1976
MECHANICS SAVINGS BANK, ET AL	:	MOTION FOR SUMMARY JUDGMENT, SUPPORTING AFFIDAVIT & BRIEF

* * * * * * * * * * *

NOTICE OF MOTION:

The Plaintiff herein moves the above entitled court on its first available motion day for its order granting summary judgment as to liability only with damages to be determined at trial by jury. Said motion will be made and based on the allegations in the Verified Complaint on file and on the allegations in the Verified Answers to Interrogatories and on the Supporting Affidavit and Brief annexed hereto.

s/
STANLEY V. TUCKER
PLAINTIFF

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) ss SUPPORTING AFFIDAVIT

The undersigned being duly sworn deposes and says:

1. That I have personal knowledge of all matters set forth below and if sworn as a witness can testify competently thereto.

2. That annexed hereto /EX "A" is a true copy of the Hartford County Bar Association "Schedule of Minimum Fees" in effect during 1969 and 1970. I certify that this is a true copy of the schedule given to me in the offices of the Hartford County Bar Association by its representative.

3. That I used the fee schedule in EX "A" in computing the fee of $474.00 in Answer No 14 to Interrogatories (dated 3/29/76)

F1

4. That this is the same fee schedule used by Defendant Thomas A. Bailey in computing the fee he charged me for legal services on the transaction for 53 Hamilton Street, Hartford as he demonstrated to me in his office.

5. That annexed hereto as EX "B" is the minimum fee schedule of the Connecticut Attorneys Title Guaranty Fund Inc and I have carefully checked the fee charged me by Gilman & Marks for Title Insurance and the fee checks out exactly as called for in this fee schedule.

6. That I certify a true copy of the closing statement handed me at mortgage closing by Thomas A. Bailey is annexed hereto EX "C".

Sworn to and Subscribed to before me.

s/ STANLEY V. TUCKER

s/ NOTARY PUBLIC

ROBERT S. DELANEY

My commission expires on 3-31-78.

Dated at Hartford, Conn. this 29th day of March 1976.

Certificate of Service

I, STANLEY V. TUCKER, hereby certify that on this 29th day of March 1976 I served the above Notice of Motion, Motion and Afdidavit and Brief on the Defendants by mailing a true copy postage prepaid in the U. S. mails at Hartford addressed:

Ed J. Foley, Esq
39 Lafayette Street
Hartford, Conn 06106

Thomas F. Parker, Esq
799 Main Street
Hartford, Conn 06103

s/ STANLEY V. TUCKER

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I. RULE 56 FRCP : "A party seeking to recover upon a claim may at any time after the expiration of 20 days from commencing of the action move with or without supporting affidavits for summary judgment in his favor upon all or any part thereof."

BRIEF

"c. The judgment shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"

In this action true or certifed as true copies of the original committment letter (EX A to complaint) show no restrictions as to title competition or competition, to attorney services. The sworn Answers to Interrogatories show an illegal conspiracy to mono polize legal services and title services at set rates. The true and or certified copies of the minimum fee (EX A to Affidavit) and of title guaranty fee(EX B to affidavit) show the use of the prohibited minimum fee price fixing. Comparison of the fee schedules quickly confirms (as do Answers to the Intrrogatories) that the federal anti-trust laws were violated by use of these price fixing techniques.

II. THE UNITED STATES SUPREME COURT IN ITS RECENT DECISION PROHIBITED PRICE FIXING OF ATTORNEY SERVICES OR TITLE SERVICES IN REAL ESTATE BY USE OF MINIMUM FEE SCHEUDLES AS VIOLATION OF SHERMAN AND CLAYTON ANTI-TRUST ACTS

Goldfarb V Virginia State Bar et al No 74-70 June 16, 1975
95 S. Ct 2004

P 2004 : " Held the minimum fee schedule as published by the County Bar Association.... violates Section 1 of the Sherman Act"

P 20024 : " In holding that certain anticompetitive conduct by lawyers is within the reach of the Sherman Act we intend no diminution of the authority of the State to regulate its professions"

See also Conn Bar Journal "The Connecticut Anti Trust ACT" Volume 47 Page 12 and cases cited therein.

RESPECTFULLY SUBMITTED:

STANLEY V. TUCKER

F3

THE
HARTFORD COUNTY
BAR ASSOCIATION

SCHEDULE
of
MINIMUM FEES

Effective January 21, 1970

Officers

JAMES C. PARAKILAS
President

EDWARD S. POMERANZ
Vice President

RALPH C. DIXON
Secretary

VALENTINO D. CLEMENTINO
Treasurer

FRANCES KRILYNO
Executive Secretary

JOHN POULOS, *Chairman*
Minimum Fees Committee

71 CAPITOL AVENUE
HARTFORD, CONN. 06106
TELEPHONE 525-9389

Unchanged Since 1969

EXHIBIT "A" F4

I. REALTY TRANSACTIONS

1—Residential Real Estate — Representation of SELLER or BUYER. For all services ordinarily or customarily performed in relation to the PURCHASE or SALE of Residential Real Estate, but not including examination of title or secondary financing documents.

A. Sales Price not in excess of $20,000.00 — $200.00

B. Amounts in excess of $20,000.00, but not in excess of $25,000.00, add 1% of excess of $20,000.00

C. Amounts in excess of $25,000.00, but not in excess of $60,000.00, add .005% of the excess of $25,000.00

D. Sales price in excess of $60,000.00, add .003% of the excess of $60,000.00

2—Representation of Builders dealing in Residential Tract housing comprising more than 15 houses, including drafting bond for deed, title, adjustments and closing. Time expended should be charged, but not less than a minimum fee, per house of — $100.00

3—Residential Lots. Sales price not in excess of $15,000.00 — $100.00
.005% on amounts in excess of $15,000.00

4—Commercial Real Estate — Representation of SELLER or BUYER. For all services ordinarily or customarily performed in relation to the sale of commercial real estate, but not including examination of title, secondary financing documents, mortgage closing statements or truth in lending statements.

A. Sales price of $25,000.00 or less — $250.00

B. Sales price in excess of $25,000.00, add .005% of the excess of $25,000.00

5—Lease (without search)

A. Residential — $50.00

B. Commercial — regular hourly rate

6—Mortgage deed and note (drafting — no search) — $35.00

7—Mortgage closing (attendance, representation of Lender) — $40.00

A. Drafting Regulation Z. statements — $20.00

8—Examination of Title with certificate based on Connecticut Standards of title. Fees calculated on the purchase price (as to the purchaser) and on the amount lent (as to the mortgagee). A regular hourly charge should be made for unusually complex searches.

A. Sales price or loan to $15,000.00 — $100.00

B. Amounts in excess of $15,000.00, but less than $50,000.00, add .006% of the increase over $15,000.00

C. Amounts in excess of $50,000.00, but less than $100,000.00, add .004% of the increase over $50,000.00

D. Amounts in excess of $100,000.00, add .002% of the excess

9—Examination of Title for mortgage purposes (Residential Builders)

A. Construction mortgage on five (5) contiguous lots, or less - per lot — $60.00

B. Construction mortgage on sixth (6th) lot and additional lot or lots - per lot — $50.00

10—Title Bring Down

A. For same Mortgagor, compute on additional loan, but with a minimum charge of — $75.00

B. New Purchaser or Mortgagor — Same fee as original search

11—Foreclosure Actions (uncontested)

A. Strict foreclosure, $20,000.00 or less — $500.00
In excess of $20,000.00, add 1% of excess

B. Foreclosure by sale, $20,000.00 or less — $650.00
Amounts in excess of $20,000.00, add 1% of excess

C. Obtaining deficiency judgment — $100.00

12—Action to Quiet Title — $350.00
Additional charges for title search and court contest

13—Summary Process

A. Drafting and issuing notice to quit possession — $25.00

B. Drafting and issuing writ, summons and complaint — $50.00

C. Uncontested judgment — $100.00

D. Contested court appearance — $200.00

NOTE: All disbursements, including sheriff's and entry fees, title insurance premiums, recording fees and conveyance tax, etc. are to be paid by the client and not included in the fee charged.

II. SALE OF PERSONALTY

1—Time charge for drafting and execution of Simple Bill of Sale, Security Agreement or UCC form.

2—Sale of Business (for Vendor or Vendee)

A. Sales price up to $7,500.00 — $300.00

B. $7,500.00 to $25,000.00, 3% of the excess over $7,500.00

C. $25,000.00 to $50,000.00, 2% of the excess over $25,000.00

D. Add 1% of excess over $50,000.00

NOTE: The above charges include all services customarily performed in the purchase and sale of businesses, including compliance with the Bulk Sales Act, examining Secretary of State records, obtaining Sales Tax Certificate of Clearance, adjustments and closing.

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III. COMMERCIAL TRANSACTIONS

1—Corporations

A. Incorporation, including minutes and By-Laws and issuing stock certificates — $500.00

B. Dissolution of Connecticut corporation pursuant to Connecticut Law — $250.00

NOTE: The above charges include only those services rendered in fulfilling the requirements of Connecticut law. Not included are stockholders, officers or directors agreements; issuing more than one class of stock or issuing debt securities.

NOTE: All disbursements to be charged additional to the client.

2—Collections

A. Commercial Claims (against businesses) 33 1/3% of amounts up to $1,000.00; 25% of amounts in excess of $1,000.00

B. Retail Claims (against individuals) 50% of the 1st $100.00; 33 1/3% of amounts in excess of $100.00 but less than $1,500.00; 25% of amounts in excess of $1,500.00

NOTE: A distinction has been made as to claims against individuals because oftentimes collection is made on an installment basis, wage executions are levied and the employee-debtor changes employment, resulting in inadequate compensation for bookkeeping and follow-up.

NOTE: The percentage rate applies to interest collected, as well as principal. The above charges do not apply to collection made pursuant to Commercial Law League Rates.

3—Bankruptcy

A. Simple, ordinary, voluntary type involving an individual. Preparation and preliminary procedure — $300.00

B. Husband and wife, same type as above (identical schedules) — $350.00

NOTE: The above does not include disbursements made on behalf of the client.

IV. WILLS AND PROBATE ESTATES

1—Wills and Trusts

A. Simple Will (drafting and execution) — $50.00

B. Simple codicil (drafting and execution) — $50.00

C. Husband and wife cross-wills (drafting and execution for both) — $75.00

D. Drafting will containing simple trust — $150.00

E. Drafting cross-wills containing simple trusts for both — $200.00

F. Drafting simple inter vivos trust — $150.00

NOTE: A simple Will is defined as a will leaving everything to one person, with a bequest or devise to one class of contingent beneficiaries, a survivorship provision, an appointment of an executor and guardian and incorporating basic statutory powers or other standard powers.

A simple trust is a single trust for one class of income beneficiaries with the remainder outright, and incorporating the Trustee's basic statutory powers or using other standard powers.

For more complex instruments, hourly charges should be made for drafting, conferences, correspondence, telephone calls and execution.

2—Probating Estates-Long Form

Acting as executor or administrator or as attorney performing the normal duties of an executor or administrator (except signing documents and checks) fees shall be computed on the following percentage of the total gross estate for Connecticut Succession Tax purposes:

A. 5% of amounts up to $15,000.00, but minimum fee for settling an estate under $8,000.00 shall be — $400.00

B. 4% on amounts between $15,000.00 and $60,000.00

C. 3% on amounts between $60,000.00 and $100,000.00

D. 2½% on amounts between $100,000.00 and $300,000.00

E. 2% on amounts between $300,000.00 and $1,000,000.00

F. 1½% on amounts between $1,000,000.00 and $2,000,000.00

G. 1% on the excess over $2,000,000.00

NOTE: If the Estate consists entirely of survivorship property, the minimum fee to be charged shall be the greater of one-half of the above fees, based on percentages listed, or time charges at the customary hourly rate, but not less than $250.00.

NOTE: An appropriate additional charge should be made for services rendered in relation to assets not subject to Connecticut Succession Tax, for filing a Federal Estate or Gift Tax Return, or any foreign tax returns, or where an audit is made of any tax return (Federal or State, income, gift or death), filed by the decedent, or his fiduciary, and such audit requires services other than minimal telephone calls and correspondence.

3—Probating Estates-Short Form
Minimum fee — $250.00
or regular hourly rate charges, whichever is greater.

4—Acting as Attorney for Corporate Fiduciary

A. Fee shall be computed on the basis of time responsibility undertaken and results achieved. However, attorneys fees will not be less than 1/3 of the fee set forth in Paragraph IV, subparagraph 2 above.

B. When an attorney acts as both fiduciary and attorney, reasonable additional charges may be made for his services as attorney where the circumstances so warrant.

5—Acting as Guardian, Conservator or Trustee under an inter vivos or testamentary trust, fees to be the greater of Time Charges, or of the following:

A. $6.00 per thousand on first $50,000.00.

B. $3.00 per thousand on next $950,000.00.

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C. $2.00 per thousand on all amounts over $1,000,000.00.

D. Plus ½ of 1% to open and ½ of 1% to close an estate.
Note: Based upon market value of principal and fractional share of income and an additional charge for property management.

E. Minimum annual fee $300.00

6-Probate Court Appearances.

A. Uncontested, one hour or less, exclusive of office time expended in preparation for appearance $50.00

B. Contested matter, exclusive of office time expended in preparation, per diem or major portion thereof $250.00

C. Office work in connection therewith to be charged at regular hourly rates.

7-Simple Adoption $200.00

8-Simple Commitment (uncontested) $200.00

9-Appeals from Probate Court. Charges to be made at trial court pleading and per diem rates.

V. COURT APPEARANCES AND LITIGATION

1-Workmen's Compensation Commission

A. Appearance for Respondent $100.00

B. Preparation and execution of Stipulations $50.00

2-Family Relations (Divorce and/or Legal Separation)

A. Uncontested for Plaintiff through judgment including one pendente lite hearing) $600.00

B. Uncontested for Defendant, original conference and appearance (includes one pendente lite hearing) $450.00

C. Additional Pendente lite hearing and post-judgment motions. Each $150.00

NOTE: Contested actions classed as Court trial work.

3-Change of Name

A. Drafting motion and court appearance $100.00

B. Companion Petitions, each $15.00

4-Circuit Court

A. Court attendance for minor traffic violations $100.00

B. Court attendance for trial of other matters, criminal or civil, per day or major portion thereof $200.00

C. Court attendance for criminal matters involving serious motor vehicle penalties with administrative sanctions, such as speeding, operating under the influence, under suspension, etc. (Examination of file, entry of appearance and trial time on a per diem basis for a first offense) $250.00
For a second offense $500.00

5-Common Pleas Court

Court attendance for trial per day or any major portion thereof $250.00

6-Superior Court & U.S. District Court

Court attendance for trial per day or any major portion thereof $300.00

7-Supreme Court of Connecticut and/or United States Circuit Court of Appeals

A. Preparation and attendance for either side $1,250.00

8-Connecticut Circuit Court, Appellate Division

A. Preparation and attendance for either side $500.00

9-Defense of Tort Cases

A. Superior Court

Entry of appearance Examination of file Drafting pleading	$200.00
Entry of appearance Drafting pleading in companion suits, each	25.00
Interlocutory motion or pleading, exclusive of memorandums or briefs	50.00
Preparation for trial	150.00
Preparation for and the taking of depositions	100.00
Pre-trial conferences	100.00
Trial, per diem	300.00
Post-trial briefs, if required	200.00

B. Court of Common Pleas

Entry of appearance Examination of file Drafting pleading	$150.00
Entry of appearance Drafting pleading in companion suits, each	25.00
Interlocutory motion or pleading, exclusive of memorandums or briefs	40.00
Preparation for trial	100.00
Preparation for and the taking of depositions	100.00
Pre-trial conference	100.00
Trial, per diem	250.00
Post-trial briefs, if required	150.00

C. Circuit Court (Ad Damnun in excess of $1,000.00)

Entry of appearance Examination of file Drafting pleading	$125.00
Entry of appearance Drafting of pleading of companion suits, each	25.00
Interlocutory motion or pleading, exclusive of memorandums or briefs	35.00
Preparation for trial	75.00

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Preparation for and taking of depositions	100.00
Pre trial conference	75.00
Trial, per diem	200.00
Post trial briefs, if any	150.00

D. For all Courts

Attendance by order of the Court-hourly rate	$25.00

(c) Criminal Matters

A. Circuit Court

Misdemeanors -- appearance and plea and sentencing (Bindover hearings, motions re evidence, per diem additional)	$250.00

B. Superior Court

Felony appearances -- appearance, plea and sentencing (motion and trial on a per diem basis additional)	$500.00

C. Juvenile Court

1. Client under 16, appearance and trial	$150.00
2. Client over 16, referred to Juvenile Court, for	
a. misdemeanors	$250.00
b. felonies	$500.00

VI. ADMINISTRATIVE COMMISSIONS

1--Preparation and appearance before Zoning Commission or Zoning Board of Appeals	
A. Simple uncontested matter	$200.00
B. Contested matters	$500.00
2--Preparation and appearance before Liquor Control Commission (Violation)	$500.00
3--Preparation and presentation of Application for new liquor license	$300.00
4--Contested Remonstrance	$500.00
5--Preparation and appearance (general) before Public Utilities Commission	$400.00
6--Preparation and appearance before Motor Vehicle Department	$150.00
7--Preparation and appearance at Coroner's Hearing	$250.00
8--Preparation and appearance before Unemployment Commissioner (representation of employer)	$250.00
9--Preparation and appearance before any other administrative agency, tax commissioner, Personnel Appeals Board, etc.	$250.00

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Connecticut Attorneys' Title Guaranty Fund, Inc.

HARTFORD, CONNECTICUT

ADMINISTRATIVE OFFICE
711 COTTAGE GROVE ROAD
BLOOMFIELD, CONN. 06002
TELEPHONE 242-0745 AREA CODE 203

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RICHARD G. TRAURIG OF
TRAURIG & TRAURIG
WATERBURY

June 3, 1969

Mr. Stanley V. Tucker
130 Newton Street
Hartford, Connecticut 06106

Dear Mr. Tucker:

I am pleased to enclose for your information Fund rate schedule for mortgagee and owner title insurance policies. This is the charge to our member attorneys for issuing title policies only. To this sum is added their charge for their services rendered in re title search, preparation of papers, attendance at closing, etc. The amount of this charge various from county to county in the state.

In Hartford County the following is the minimum fee schedule adopted for Examination of Title with Certificate based on standards of Title; Fees calculated on amount risked: as to the owner, the purchase price, and to a mortgagee, the amount lent:

$ 0 to $	15,000	$75.00
$ 15,001 to $	25,000-add 1/2 of 1% (on excess of $ 15,000)	
$ 25,001 to $	50,000 - add 3/8 of 1% (on excess of $25,000)	
$ 50,001 to $	100,000 - add 1/4 of 1% (on excess of $50,000)	
$100,001 to $1,000,000	- add 2/10 of 1% (on excess of $100,000)	

The above is for title search only and does not include representation at closing, preparing papers, etc.

I trust that this is the information you desire.

Very truly yours,

Mrs. Estelle S. Cherlin
Administrative Assistant

C - Enclosure

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GILMAN & MARKS
ATTORNEYS AT LAW
49 PEARL STREET HARTFORD, CONN.

LOAN MEMORANDUM.

BANK MECHANICS SAVINGS BANK

LOAN FOR STANLEY V. TUCKER DATE May 16, 1969

LOCATION OF PROPERTY 53 Hamilton Street, Hartford

	DR. Total loan $64,000.				
Check from First Mortgagee	- Return of Stanby fee			Put in Savings Acct	(640 00)
" " 2nd "					
" " Borrower					799 25
	CR.				
Lawyers Title Ins. Corp- title policy			153 00		
Secretary of State - UCC1			3 00		
Survey Close, Jensen & Miller			127 50		
Taxes					
Recording Town Clerk			42 00		
Attorney's Fee Gilman & Marks			473 75		
Check to Balance					
Total			799 25		799 25

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff	:	
VS.	:	
MECHANICS SAVINGS BANK, and GEORGE H. GILMAN, JR., ALBERT J. MARKS, JR., both doing business as GILMAN and MARKS, and THOMAS A. BAILEY, Defendants	:	Civil Action No. H75-359

RESPONSE OF DEFENDANTS G EORGE H. GILMAN, JR., ALBERT J. MARKS, JR., doing business as GILMAN and MARKS, and THOMAS A. BAILEY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, and DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The above defendants hereby submit the attached Memorandum of Law and supporting papers in opposition to Plaintiff's Motion for Summary Judgment, and move the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, Summary Judgment in favor of the above defendants, dismissing the action on the basis of the attached Memorandum of Law and supporting Affidavit and papers.

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ATTORNEYS AT LAW
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MEMORANDA OF LAW

I SUMMARY JUDGMENT IS INAPPROPRIATE SINCE THERE EXISTS GENUINE ISSUES AS TO MATERIAL FACTS.

The plaintiff has moved for Summary Judgment in this action as to liability only. Summary Judgment upon a claim is appropriate only when there is no genuine issue of any material fact and that the moving party is entitled to a judgment as a matter of law (F.R.C.P. 56 (c)). All matters presented in connection with the motion must be construed most favorably to the party opposing the motion . United States v. Diebolt, Inc. 369 U.S. 654, 82 S.Ct. 993, 8L Ed2d 176 (1962). This procedure"should be used sparingly in complex anti-trust litigation where motive and intent [play] leading roles . . ." Poller vs. Columbia Broadcasting System 368 U.S. 464, 473, 82 S.Ct. 486, 7 L Ed 2d 458 (1962). With these principles in mind, several areas are set forth below for which the defendants contend genuine issues of material facts are in dispute.

1. Except for the bare allegations in his complaint, the plaintiff has no where provided proof that the elements of conspiracy existed between the defendants, or that a contract existed as alleged. Plaintiff has only presented conclusionary allegations "but has provided nothing that supports or explains the theory of his claim" Capitol Temporaries, Inc. of Hartford vs. Olsten Corp. 383 F Supp. 902, 904 (DC Conn. 1974)

Thomas A. Bailey has unequivocally denied the above allegations in his Affidavit (Exhibit A), as all defendants have done in their answer to the complaint. The proof of such an illegal conspiracy or contract is a necessary element for the successful litigation of the causes of action as posed by the plaintiff in his complaint.

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2. Defendant Thomas A. Bailey in his Affidavit has denied that his legal opinion, which was a factor in the decision of Mechanics Savings Bank to refuse to release the final mortgage monies to the plaintiff, was motivated or based on a quid pro quo, that is, that the legal opinion was rendered as "consideration" for Gilman and Marks possessing a "monopoly" on legal work on this mortgage. Once again only bare allegations are present to support this claim of the plaintiff.

3. The plaintiff posits various allegations in regard to "minimum fee schedules". However, the evidence he presents about the manner by which the charge of $473.75 was computed is replete with suppositions. For example, in answer to interrogatory #14 of Mechanics Savings Bank, Mr. Tucker states, "there may be more than one way of computing the minimum fee, but as I compute the fee, I come up with $474.00"(emphasis supplied). The method he used or services he considered in reaching this figure are not explained. This should be juxtaposed with answer to interrogatory #21 in which using the fee schedule he maintains that a "reasonable charge" would be $100. Since the $473.75 represents the cost for services rendered by Gilman and Marks alone, defendants are at a loss to understand how the plaintiff arrived at figures so divergent using the same schedule of fees.

But, more important, the plaintiff in his Affidavit states, "That I used the fee schedule in Ex. "A" in computing the fee of $474.00 in answer #14 to interrogatories (dated March 29, 1976)" . This demonstrates that Summary Judgment is inappropriate since the charges were paid to Gilman and Marks in May of 1969, while the fee schedule (plaintiff's Exhibit A) the plaintiff used in supporting his allegations clearly shows on the cover that said schedule was effective as of January 21, 1970.

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Therefore, none of the plaintiff's allegations or computations may be considered as evidence in respect to how the plaintiff deduced the way Gilman and Marks charged.

4. No where has the plaintiff offered any proof that Mechanics Savings Bank or Gilman and Marks had, at the time of the complaint, sufficient economic power in respect to the tying product (the loan) to construe such a relationship as an "unreasonable" restraint of trade, Northern Pacific Railroad Co. v. United States 356 US 1, 78 S.Ct. 514, 2L Ed2D 545 (1958)

Therefore, until such time that the plaintiff is able to provide the necessary evidence in support of his allegations, his Motion for Summary Judgment must be denied. Furthermore, denial is mandatory based on the denials of the conspiracy or illegal contract by Thomas A. Bailey in his Affidavit. Such a denial established a material factual dispute which is inappropriate for resolution by Summary Judgment.

II THE PLAINTIFF'S CLAIMS ARE BARRED BY 15 U.S.C. 15b and C.G.S. 35-40

Section 15b of Title 15 states that "Any cause of action under section 15 or 15a of this Title [Monopolies and Combination] shall be forever barred unless commenced within four years after the cause of action accrued".[1] The plaintiff has basically alleged three violations of Title 15 and the anti-trust provisions of Connecticut, to wit: (1) Gilman and Marks duplicated title work plaintiff alleges to have had done on 53 Hamilton Street, pursuant to an illegal conspiracy or contract; (2) Gilman and Marks performed all the work on the mortgage on 53 Hamilton Street pursuant to an illegal conspiracy or contract at a minimum fee price; and (3) Gilman and Marks wrongly " 'interpreted' the mortgage terms contrary" to 49-3[2] of the Connecticut General Statutes

---

1 Discussion of the Statute of Limitation defense is also applicable to the Connecticut four year statute of limitation (C.G.S. 35-40)

2 See plaintiff's answer to interrogatories #24 of defendant Mechanics Savings Bank

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pursuant to an illegal conspiracy and contract. To each of these allegations the applicable Federal and State four year Statute of Limitations has run.

Section 15b of Title 15 and C.G.S. 35-40 reflect a legislative judgment on the period of time for which alleged anti-trust violations should be brought to the attention of the Courts and defendants. "Statutes of Limitations find their justification in necessity and convenience rather than in logic. They represent expedients rather than principles." Chase Securities Corporation v. Donaldson 325 U.S. 304, 314, 65 S.Ct. 1137, 89 LED 1628 (1944); reh denied 325 U.S. 895, 65 S.Ct. 1561, 89 LED 2006.

The operative theory of the Statute of Limitations was stated in Order of Railroad Telegraphers v. Railway Express Agency, Inc. 321 U.S. 342, 348-349, 64 S.Ct. 582, 88 LED 708 (1943) where the Court said that even if a just claim is barred ". . . . it is unjust not to put the adversary on notice to defend within the periods of limitation and that the right to be free of stale claims comes to prevail over the right to prosecute them".

The United States Supreme Court remarked at page 390 in Riddlesbarger v. Hartford Insurance Company 74 (7 Wall) U.S. 386, 19 LED 257 (1868) that the policy behind the Statute of Limitations is founded

> . . . upon the general experience of mankind that claims, which are valid, are not usually allowed to remain neglected. The lapse of years without any attempt to enforce a demand creates, therefore, a presumption against its original validity . .

The Second Circuit has noted that these statutes

> . . . embody a concern for the speedy disposition of claims within a reasonable period after their origin, for the protection of the defendant from protracted fear of litigation.

Pearson vs. Northeast Airline, Inc. (CA2 1962) 309 F2d 553, N. 13 at 559, cert. denied 372 U.S. 912, 83 S.Ct. 726, 9 LED 720 (1962).

The final major policy behind the Statute of Limitations is to relieve the Courts of "The burden of trying stale claims when a plaintiff has slept on his rights" Burnett v. New York Central Railroad 380 U.S. 424, 428, 85 S.Ct. 1050, 13 LED 2d 941 (1965). It is a legislative judgment that a point in time is reached where the plaintiff shall be

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barred from asserting his claims ". . . to the injury of individuals and the disturbance of society". Public Schools v. Walker 76 (9 Wall) U.S. 282, 288, 19 LED 576 (1869).

The United States Supreme Court has stated that for purposes of 15 U.S.C. § 15b, "Generally a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business." Zenith Radio Corporation v. Hazeltine Research 401 U.S. 321, 338 91 S.Ct. 795, 28 LED 2d 77 (1971).

The "right of action for civil conspiracy under the anti-trust laws accrues from the commission of the last overt act causing injury or damage". Pato v. Madison Square Garden Corporation (CA2 1967) 384F.2d 683; See Akron Presform Mold Company vs. McNeil Corporation (CA6 1974) 496 F 2d 230, 234.

Where a violative act is complete in itself, the statute is not tolled simply because the effects of a particular act may continue to be felt. Where the violation is final at its impact, for example,

> . . . . where an actionable wrong is by its very nature permanent at initiation without further acts, then the acts causing damage are unrepeated, and suit must be brought within the limitations period and upon the initial act.

Poster Exchange Inc. vs. National Screen Service Corporation (CA5 1975) 517 F 2d 117, 126-127. In view of these principles, each of the violative acts alleged by the plaintiff must fail as not being timely instituted.

Mr. Bailey in his affidavit states that his firm first received notification of the proposed Tucker mortgage on January 24, 1969. Title work was performed and finished by May 16, 1969, the date that the mortgage deed and note, and other papers were executed (Exhibit B). Payment was made by the plaintiff shortly thereafter. Whatever actionable wrong might have existed in regard to this work or the fee charged, the act

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by its very nature was permanent and complete as of that time. S ince the plaintiff did not file his complaint until November 5, 1975, the plaintiff's cause of action as to title work and fee charged must fail as being effectively barred by 15 U.S.C.§15b and C.G.S.35-40.

The above propositions are equally applicable and germaine to the plaintiff's allegations concerning the mortgage preparation. The mortgage was completed and signed by the plaintiff and Mechanics Savings Bank on May 16, 1969. The expense for the preparation of this document, which was prepared for Mechanics Savings Bank, was paid for on May 20, 1969. Thus, this part of the plaintiff's complaint must likewise fail as being barred by 15 U.S.C. § 15b and C.G.S. 35-40.

The final allegation posed by the plaintiff concerning a "wrongful interpretation" of mortgage terms must fail for similar reasons. Whatever "interpretation" and opinion Gilman and Marks made in regard to the final release of $12,800 was made by June 15, 1970 (the final date set in the mortgage deed for the mortgagor's obligations to be met in order to trigger the release of these monies). Whether the advice transmitted to Mechanics Savings Bank, its client, was correct or not, the fact remains that it was a completed act as of June 15, 1970. In other words, the legal opinion rendered by Gilman and Marks was by its "nature permanent at initiation without further acts" Poster, Supra at 126.

Plaintiff cannot contend that each subsequent reliance by Mechanics Savings Bank on the legal opinion rendered by Gilman and Marks in June of 1970 established a new cause of action upon which he may sue, the Statute of Limitations notwithstanding. That is, the sudden renewal of the demand for the release of the $12,800 in September of 1975 (See plaintiff's answer #25 to interrogatories filed by Mechanics Savings Bank) in anticipation of the present action will not start the action running anew. The opinion of Gilman and Marks was "final" as a completed act by June 15, 1970. No further work was done on this mortgage after this date, the title work was done, the mortgage papers finished and a legal opinion rendered on same by June 15, 1970.

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Tolling of the statute does not occur where the "very existence of the cause of action is speculative". Akron Presform, Supra at 234. As the Court stated in Foster at page 198:

> It remains clear nonetheless that a newly accruing claim for damages must be based on some injurious act actually occuring during the limitation period, not merely the abatable but unabated inertial consequences of some prelimitations action (emphasis supplied).

To hold that each reliance on a legal opinion by Mechanics Savings Bank starts the Statute of Limitations to run anew against Gilman and Marks, would render the statute a nullity. These legislative dictates would hold no meaning.

The plaintiff in the case at bar has waited over five years to seek redress for actions that he claims unlawfully injured him. His complaint falls more than one year past the date of the final act alleged to have been violative of Title 15 and Connecticut's anti-trust section. As Mr. Bailey clearly spells out in his Affidavit, the absolute last contact he or Gilman and Marks had with the Tucker mortgage was in the Fall of 1970 and that was only to confirm a legal opinion made in June of that year. The plaintiff is clearly barred from the prosecution of his case by 15 U.S.C. 15b and C.G.S. 35-40.

Therefore, defendants Thomas A. Bailey, Albert J. Marks, Jr. and George H. Gilman, Jr. ask that this Court grant Summary Judgment for each of the claims made by the plaintiff as being absolutely barred by 15 U.S.C. 15b and C.G.S. 35-40.

Respectfully submitted,

JON S. BERK

Dated at Hartford, Connecticut
April 23, 1976

Gordon, Muir and Foley
39 Lafayette Street
Hartford, Connecticut 06106

THIS IS TO CERTIFY that I have this day served a copy of the foregoing and Exhibits A, B and C. upon Stanley V. Tucker, Box 35 Hartford, Connecticut, and to Thomas F. Parker, Esquire, 799 Main Street, Hartford, Connecticut.

G8

JON S. BERK

GORDON, MUIR AND FOLEY
ATTORNEYS AT LAW
39 LAFAYETTE STREET
HARTFORD, CONN. 06106

STANLEY V. TUCKER, Plaintiff	
v.	CIVIL ACTION NO. H-75-359
MECHANICS SAVINGS BANK, ET AL Defendants	

BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This is a brief brief. The motion for summary judgment made by the plaintiff is inappropriate here. Rule 56 clearly provides that summary judgment may only be granted "if all papers on file show that there is no genuine issue as to any material fact." Further recitation of the authority for this proposition is unnecessary.

Clearly there are genuine issues of fact. The affidavit of George G. Johnson, the operative official of the bank, clearly puts in issue statements made by the plaintiff as to the facts which occurred at the time the mortgage was being processed. For example, the Johnson affidavit denies the plaintiff's key allegations regarding the setting of the fee and the reason for the non-disbursal of the mortgage proceeds. Also, defendant Mechanics Savings Bank's Answer, as amended, pleads the Statutes of Limitation. The Johnson affidavit (¶8 and 9 thereof) states the fact basis for the statutes of limitation defense. [The defense of the statutes of limitation will be the subject of motions by the defendant Mechanics Savings Bank in the near future.]

The defendant, Mechanics Savings Bank, respectfully requests that the plaintiff's motion for summary judgment be denied as there are genuine issues of fact in dispute.

H 1

s/ THOMAS F. PARKER

Dated at Hartford, Connecticut, this 30th day of April 1976

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER	C.A. NO H 75-359
Plaintiff	PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF SUMMARY JUDGMENT AS TO ALL DEFENDANTS AND BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY BY ALL DEFENDANTS
-v-	
MECHANICS SAVINGS BANK ET AL	
Defendants	MAY 21st, 1976

* * * * * * * * * *

Plaintiff files this brief as supplement to brief in support of summary judgment and especially as to defenses of statute of limitations raised by all defendants and in addition since GILMAN & MARKS, ET AL filed one brief for opposition and in support of their motion for summary judgment the plaintiff includes in this brief added material needed to oppose motions by ALL DEFENDANTS.

I. SUMMARY JDUGMENT FOR PLAINTIFF IS APPROPRIATE SINCE AFFIDAVITS DO NOT CONTROVER MATERIAL FACTS OF ANTI-TRUST ALLEGATIONS AND DOCUMENTS ANNEXED TO MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF ARE ADEQUATE AND UNDISPUTED

The affidavits filed by the Defendants do not dispute the material allegations of the Plaintiff's affidavit in support of summary judgment and indeed documents filed by the Defendants and allegations in Defendant's affidavits go to prove the illegal conspiracy. To aid this court in light of many papers filed by all parties the following argument is presented.

1. Use of Illegal Minium Fee Schedule. Affidavit of Thomas A. Bailey confirms the allegations of the verified complaint and allegations in affidavit in support of summary judgment by Plaintiff. The fact that Mechanics Savings Bank did not "set the fee" as alleged by Bailey and by George G. Johnson and Ernest C. Eignall is irrelevant. By their own affidavits Defendants confirm they "chose" Gilman and Marks to do the legal work under a secret understanding (conspiracy) to use the Hartford County Bar Association minimum fee schedule.

2. The Defendants Affidavits Compared With Commitment Letter Confirm Illegal "Tie In" of Attorney Services

The commitment letter dated January 2, 1969, EX "A" to verified complaint contains all known (to Plaintiff) terms and conditions binding upon Plaintiff when he paid the "holding fee" of $640 and accepted. There can be no doubt that an illegal conspiracy existed when George G. Johnson alleges in his affidavit such matters as.....

"the bank chose the law firm of Gilman and Marks.....

"Stanley V. Tucker was informed from the outset that the law firm of Gilman and Marks was doing the work..... and that he, Stanley V. Tucker was required to pay for their services as a condition of the loan"

The commitment letter, EX "A" to complaint shows the above to be outside the scope of the loan agreement Mechanics had with Stanley V. Tucker and these allegations reveal in their stark simplicity the nature of the illegal secret conspiracy whereby Mechanics Savings Bank using its great economic power of the $640 fee (lost if Tucker backed out on loan) and the lost time and hardship if another loan application was taken to another bank. There can be no doubt that the affidavits of the defendants read in light of the complaint and the exhibits reveal the true conspiracy that existed.

3. The Illegal Withholding of $12800 was outside the Scope of the Commitment Letter and Part of the Conspiracy

The commitment letter, EX "A" to complaint, is barren of any of the "legal opinion" issued and proved by the affidavit of Thomas A. Bailey in June 1970 and later in the fall and via affidavits of Johnson and Wignal the basis for refusal of the $12,800 over a period of years from June 1970 to Sept 1975.

The terms of the mortgage note and deed supplied as exhibits by defendants show the work of Thomas A. Bailey to include his own bizarre "interpretation" of Connecticut's mortgage law, G. S. 49-3, and(unfortunately as admitted by Bailey unsupported in Connecticut case law) secretly used in an opinion to Mechanics to illegally withhold $12,800 pursuant to the illegal conspiracy and agreement. Inclusion of such terms and conditions in the mortgage deed and note long after the commitment letter was signed without such terms is indicative the the great economic power Mechanics had over Plaintiff at that late date by reason of need for contractor payments and materials payments -2-

II. THE PLAINTIFF'S CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS DUE TO A CONTINUING CONSPIRACY THAT CAUSED OVERT ACTS DENYING FUNDS TO PLAINTIFF UNTIL THE PRESENT AND DUE TO FRAUDULENT CONCEALMENT OF THE BASIS FOR THE WITHOLDING AND BECAUSE IN 1970 THE INJURIES WERE NOT KNOWN BEING SPECULATIVE AND THE PLAINTIFF COULD NOT REASONABLY HAVE BEEN EXPECTED AT THAT TIME TO FILE SUIT.

A. STATUTE OF LIMITATIONS IS NOT A DEFENSE UNDER FEDERAL LAW

1. Federal law on limitations is governing in federal court.

Holmberg v Armbrecht 327 US 392 1946

"Decision of a suit in a federal court to enforce a federally created equitable right is not controlled by the statute of limitations of the state of the forum"

2. Mortgage Tying of Extra Costs Violates Anti-Trust Laws

Kinee v Abraham Lincoln Federal S & L 385 F Supp 975 1973

Page 975:

5. Monopolies ⇐28(6.4)

Construing antitrust complaint broadly, conspiracy theory advanced therein stated a claim upon which relief might be granted as to allegations that defendant writers of mortgages, in relation to requirement that borrowers, as part of their mortgage agreements prepay in monthly installments, without receiving any interest on their money, a sum equal to one-twelfth the annual expected property tax, mortgage insurance premiums, sewer and water rentals and other possible liabilities, caused the disappearance of or a substantial reduction in the availability of the principal debt balance method of accounting for tax, assessment, and insurance payments from a market which was formerly characterized by substantial competition. Sherman Anti-Trust Act, § 1, 15 U.S.C.A. § 1.

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In Fortner Enterprises Inv v U. S. Steel 394 US 495 1969 a tie in sales of credit was held to be a per se violation of the anti-trust laws with economic power inferred from seller's ability to impose burdensome terms such as a tie-in. Another action involving loans where the court upheld anti-trust jurisdiction over tie in sales of life insurance policies and irrigations systems was

355 F Supp 1151 1973 at P 1152:
Fry v Hancock Insurance Co

Court, Woodward, J., held that in class action against insurer alleging violation of, inter alia, the Sherman Act, allegations that insurer engaged in an unlawful conspiracy in unreasonable restraint of interstate farm loans by employing tie-in arrangements requiring members of the class to purchase irrigation systems and/or life insurance policies from insurer as a condition of obtaining farm loans from insurer, activities complained of were not part of the "business of insurance" which Congress sought to remove from federal regulation by means of the McCarran-Ferguson Insurance Regulation Act.

Motion denied.

In Northern Pacific RR Co v USA 79 S Ct 514 1958 it was held that deeds and leases were illegal and injunctive relief granted on anti-trust grounds where they required as a tie in clauses that goods be shipped via the railroad. Mr Justice Black, held that unless rates were more favorable the "preferential routing" clauses were per se unlawful restraints of trade in violation of Sherman Act. In this action Defendants cannot contend that their use of "preferential attorneys services" were based on "more favorable rates" as under the verified allegations of the complaint Plaintiff had to pay double and triple for title search.

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3. Federal Courts Have Held Continuing Conspiracies to Toll the Statute of Limitations and All Conspirators Are Liable if Any Conspirator Commits an Overt Act in Furtherance of the Conspiracy.

The classic case the develops the theory of liability of all conspirators in a continuing consiracy is U. S. v Compagna 146 F 2d 524 2nd C. A. Cert Denied 65 S Ct 912.

> "A defendant once shown to have been a member of a conspiracy which lasts until beginning of limitations period must satisfy jury by affirmative proof that he disconnected himself from conspiracy before that period began to assert defense of statute of limitations"

In this action the undisputed allegations show that $12,800 was denied to Plaintiff repeatedly last in Sept 1975 based on an "opinion" rendered by Thomas A. Bailey and that as of this date none of the defendants have taken any affirmative action to repudiate and to disconnect themselves from the illegal conspiracy. The 9th CA in 1975 in Twin City Sportserv v Finley 512 Fe2nd 1264 well expressed the "continuing harm" theory"

P1270:

> A civil cause of action under the Sherman Act arises at each time the plaintiff's interest is invaded to his damage, and the statute of limitations begins to run at that time. Suckow Borax Mines Consol., Inc. v. Borax Consol., Ltd., 185 F.2d 196, 208 (9th Cir. 1950), cert. denied 340 U.S. 943, 71 S.Ct. 506, 95 L.Ed. 680 (1951). Sportservice argues that Finley's suit is barred because it was not filed within four years of the last allegedly damaging act, the amendment or extension of the contract to its complete 33-year duration in 1954. This argument overlooks the necessarily continuing nature of the alleged harm. As the Supreme Court stated in Hanover Shoe, Inc. v. United Shoe Mach. Corp., 392 U.S. 481, 502 n. 15, 88 S.Ct. 2224, 2236, 20 L.Ed.2d 1231 (1968),
>
> "We are not dealing with a violation which, if it occurs at all, must occur within some specific and limited time span. [Citation omitted.] Rather, we are dealing with conduct which constituted a continuing violation of the Sherman Act and which inflicted continuing and accumulating harm . . ."

Thus the fact that the final amendment to the contract was made in 1954 does not preclude Finley from bringing suit in 1968. To hold otherwise is to say that some damage that might have been sustained was barred before it accrued.

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Another action where the USDC - ND Illinois rejected a statute of limitations defense on agreements last amended in 1961 and 1962 where continuing damages were alleged through March 1972 bis Lupia v Stella D'Oro Biscuit Co 1974-1 Trade Cases S 75,046, appeal dismissed (7th CA) cert denied 417 U. S. 930 (1974) at Page 96,686:

III. *Statute of Limitations*

The complaint in this case was filed on March 22, 1972. 15 U. S. C. § 15(b) provides that an action is "forever barred unless commenced within four years after the cause of action accrued." Generally, a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business. *Zenith Radio Corp. v. Hazeltine Research* [1971 TRADE CASES ¶ 73,484], 401 U. S. 321, 338 (1971). Where a continuous course of unlawful conduct or a continuing conspiracy is alleged, a cause of action accrues when "a plaintiff feels the adverse impact" of each invasion of his rights. *Id.* at 339. The injurious impact of each new overt act in the course of illegal conduct creates a new cause of action for which damages may be recovered. *Weber v. Consumers Digest, Inc.* [1971 TRADE CASES ¶ 73,514], 440 F. 2d 729, 731 (7th Cir. 1971).

There are, accordingly, allegations of a course of conduct beginning with and either premised upon or related in some way to the 1961 and 1963 agreements, but continuing through the years until 1971. It is to be noted that one alleged violation, allowing plaintiff to handle products manufactured by other manufacturers if plaintiff bought them through defendant, is inconsistent with the terms of the agreements and cannot be said to depend upon them. To the extent that plaintiff can prove overt acts which caused him injury in the period between March 22, 1968 and March 22, 1972, he would be entitled to damages for that injury.

The above recent decisions naturally follow from the decision of the UNITED STATES SUPREME COURT in Zenith Radio. v Hazeltine Research 91 S Ct 795 (1971)

Zenith, supra, affirmed that under anti-trust laws suit is not limited to damages known at time of first injury but under continuing conspiracy includes future damages even going beyond trial see P 796:

11. Monopolies ⇐28(9)

In case of continuing conspiracy to violate antitrust laws, each separate cause of action that accrues each time plaintiff is injured by act of defendant entitles plaintiff to recover not only those damages which he has suffered at date of accrual but also those which he will suffer in the future from particular invasion, including those he has suffered during and will predictabl suffer after trial. Clayton Act, § 5(b) as amended 15 U.S.C.A. § 16(b).

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In detailed opinion Zenith, supra, developed that speculative damages beyond four year period are not barred. P 798

> 3. A plaintiff in an antitrust action may recover damages occurring within the statutory limitation period that are the result of conduct occurring prior to that period if, at the time of the conduct, those damages were speculative, uncertain, or otherwise incapable of proof. Pp. 806–808.

The argument developed in Zenith, supra, stands to reject a statute of limitations defense herein as the damages were speculative in 1970 and not known with precision until 1974 and 1975

Recent decisions of the federal courts have expanded the "continuing conspiracy" theory to include time periods during which no overt acts were alleged but inferences existed to show the continued existance of the conspiracy. Muller Corp Zurich v Gazocean Inernational S.A. USDC SD NY May 27, 1975. 1975-2 Trade Cases 60,401 :

> It is thus apparent that plaintiff can only recover damages in this action for acts which occurred within four years of the filing of the second complaint. The defendants argue that since plaintiff has not alleged one *specific* overt act during this critical period, the complaint must be dismissed.
>
> We are constrained to disagree. It is now beyond cavil that the liberal rules of notice pleading under Rule 8 of the Federal Rules of Civil Procedure are as applicable to complicated antitrust suits as they are to simple claims of negligence. See, Moore's *Federal Practice*, Vol. 2A, § 8.17[3], pp. 1743 *et seq.* Plaintiff has alleged in the Second Complaint that the claimed antitrust conspiracy extended into 1971 and beyond. Although no specific overt acts were alleged for this period, plaintiff has indeed set forth many overt acts occurring in 1968, 1969 and 1970, from which a continuing conspiracy as well as the continuing performance of overt acts can certainly be inferred, particularly as to those defendants who do not have the benefit of an adjudication that no conspiracy existed prior to June 24, 1974. See, e.g. *Brett v. First Federal Savings & Loan Association* [1972 TRADE CASES ¶73,982], (5th Cir. 1972) 461 F. 2d 1155.

In this action Plaintiff has alleged overt acts pursuant to the conspiracy to deny the $12,800 last act in Sept 1975 however, under the Muller Corp, supra, opinion overt acts are not required to be alleged but can be inferred.

4. Speculative Damages at the Time of the First Overt Act Toll The Statute of Limitations.

The allegations of the verified complaint and more clearly the proposed Amendment to Complaint show that as of June 1970 Plaintiff could not realistically foresee the damages he would be subjected to in later years and especially in 1974 and 1975. A trial on damages alone(if summary judgment were granted on Plaintiff motion on liability alone) would afford defendants ample time to contest specific damages claims with testimony and witnesses. Plaintiff is entitled to summary judgment on grounds of speculative nature of damages and the motions for summary judgment by defendants based on statute of limitations should be denied. Zenith Radio v Hazeltine Research 91 S Ct 795 clearly propounded for the first time the theory of speculative damages tolling the statute of limitations.

Zenith P 797:

14. Monopolies ⇐28(4)

In view of record disclosing that if counterclaimant had brought a treble damage action for damages suffered as a result of conspirator's activities more than four years before statutory period for which present suit was being brought and had attempted to prove future damages it would not have been allowed to recover those future damages, counterclaimant was entitled to recover damages in present action even though a portion of damages was the proximate result of conduct occurring more than four years prior to filing of counterclaim. Clayton Act, § 5(b) as amended 15 U.S.C.A. § 16(b).

The above case was further expanded to hold that the "speculative" nature of the damages - not the speculative nature of the existance of a cause of action is what tolls the stature of limitations.

Akron Presform Mold Co

v McNeil Corp 496 F 2d 230 (1974) at P 233:

[1-3] This statute of limitations commences to run from the commission of the last overt act causing injury or damage. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 338, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971); Garelick v. Goerlich's Inc., 323 F.2d 854, 855 (6th Cir. 1963). Generally, there are two means by which one can avoid the operation of the statute of limitations. One, the rule enunciated in *Zenith Radio Corp., supra,* 401 U.S. at 338–342, 91 S.Ct. 795 provides that a plaintiff may recover damages occurring within the period of the statute of limitations that are the result of conduct occurring prior to that period, if at the time of the conduct, those damages were speculative, uncertain or otherwise incapable of proof. Second, in cases in which the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant, Glus v. Brooklyn Eastern Terminal, 359 U.S. 231, 79 S.Ct. 760, 3 L.Ed. 2d 770 (1959), or because of fraudulent concealment, Holmberg v. Armbrecht, 327 U.S. 392, 66 S.Ct. 582, 90 L.Ed. 743 (1946), the Supreme Court has held the statutory period to have been suspended or tolled by the conduct of the defendant.[3]

In applying the Supreme Court Zenith, supra, holding as to anti-trust claims arising from a foreclosure the statute began to run from the commencement of the foreclosure as at that time the damages were sufficiently appraisable for the issue to go to the jury.

Monona Shores v U. S. Steel 374 F Supp 930 D Minn 1974

The attention of this court is invited to Para 17 of the verified complaint..."Plaintiff has continually suffered damages from June 1970...continued into the future..."

The attention of this court is invited to Answers to Interrogatories dated March 23, 1976 Int No 26 Item 5 which develops damages due to foreclosure that started in 1975 (see proposed amended complaint Para 23 d)

Some of the many caaes in which fraudulent concealment tolled the limitations statute are:

G. E. Cov v City of San Antonio 334 F 2d 480 1964

Kansas City v Federal Pacific Electric Co 310 F 2d 271 1962

Atlantic City Electric v G. E. Co 312 F 2d 236 1962
on appeal from 207 F Supp 613 S.D. NY affirmed by 2nd C. A.

Public Service of New Mexico v G.E. Co et al 315 F 2d 306 1963

6. Federal Courts have Held Statute of Limitations Runs From Date Termination of Installment Contract Not When Executed.

The defendants argue on a mortgage contract with fixed monthly instalmment payments that run until June 1995 that a limitations period should be computed from June 1970 because that is when they illegally witheld $12,800. Such an argument is self-serving and conclusionary and without any foundation in case law. Baker v F & F Investment 420 F 2d 1191 1970 affirms the opposite - that the statute runs from when final payment terminating the installment contract is made. Baker at P 1191:

> **Class actions seeking relief for alleged sales of used residential property to Negroes at higher prices and under more burdensome terms than would have been charged white purchasers. The United States District Court for the Northern District of Illinois, Hubert L. Will, J., 300 F.Supp. 210, held that plaintiffs stated claim on which relief could be granted under Civil Rights Act but that statute of limitations ran from date installment contracts terminated rather than date they were executed. Defendants took interlocutory appeals and plaintiffs were given leave to cross appeal. The Court of Appeals, Cummings, Circuit Judge, held that doctrine of laches was not applicable, that five-year statute of limitations for civil state actions not otherwise provided for governed claim under Civil Rights Act and that period of limitations commenced when contracts terminated.**
>
> **Affirmed.**

7. Conspiracies Are Usually Concealed and Difficult To Allege Precise Facts and Federal Courts Accept Facts From Which Inferences Can Be Drawn.

Brett v Frist Federal S & L 461 F 2d 1155 1972

P 1158:

> [6-8] Although plaintiffs may be unable to allege specific facts proving actual acts of agreement or conspiracy, the pleadings are sufficient if they set forth facts from which an inference of unlawful agreement can be drawn. Actual agreements are seldom capable of proof by direct testimony and thus circumstantial evidence may be allowed to establish an alleged conspiracy. Interstate Circuit v. United States, 306 U.S. 208, 221, 59 S.Ct. 467, 83 L.Ed. 610 (1939); Eastern States Retail Lumber Dealers' Ass'n v. United States, 234 U.S. 600, 612, 34 S.Ct. 951, 58 L.Ed. 1490 (1914); Wall Products Co. v. National Gypsum Co., 326 F.Supp. 295, 316 (N.D., Cal., 1971). Plaintiffs cannot be required to plead with specificity the very facts which can only be proven by circumstantial evidence.

In this action inferences of an unlawful agreement can easilly be drawn from the Committment Letter, Ex A to the complaint, barren of the illegal tie in and of the minimum fees imposed by the great economic power of the Mechanics Savings Bank on Plaintiff after he accepted the commitment The "opinion" secretly concealed from Plaintiff in June 1970 and even to this very date is unmentioned in the commitment letter. The Affidavits of Johnson and Wignal, senior executives with Mechanics Savings Bank show that they imposed on Plaintiff the necessity for the tied in product and gave to Plaintiff no escape from the monoplistic and anti-competitive methods they chose to use. I 12

B. STATUTE OF LIMITATIONS IS NOT A DEFENSE UNDER STATE LAW

Within Connecticut case law has from early times held that a "tort is complete" when the injury is sustained that results from the tortious action for purposes of the statute of limitations. Thus clearly following federal case law.

Bank of Hartford v Waterman 26 Conn 324 1853

P 324: "when the act is not legally injurious until certain consequences occurr the period takes date from the consequential injury"

This theory is consistent with old English law and with cases from all states going back to colonial times.

Perhaps the clearest of early cases in its summary of legal principles prohibiting the defense of statute of limitations is Rector etc Church of Holy Communion v Paterson Extention R Co 49 Atlantic 1030 N.J. 1901. In this action damages to a retainer wall were paid for and released and as many years went by vibrations from the passing trains caused more damages. It was held neither the release nor the statute of limitations barred the damages and indeed a new settlement or judgment would not bar suit for continuing future damages if such occured.

"It is a fundamental principle of law applicable alike to breaches of contract and to torts, that in order to found a right of action, there must be a wrongful act done, and a loss resulting from that wrongful act" Warwick v Hutchinson 45 N. J. Law 61

The theory that damages (and time for computing of the statute of limitations) runs from completion of a contract (in this case the contract is the mortgage contract terminating in June 1995) was well expressed in :

Skidmore, Ownings & Merill v Conn General 26 Conn Supp 76

> "the allged breach of contract by the plaintiff was a continuing one until 1957, the date of completion of the building."

In Skidmore, supra, Defendant Architects, contended in a negligence action that they were protected and the statute of limitations was computed based on when the plans were approved and work started. But the Court held that the statute ran from completion of the building.

The following cases in Connecticut all consistently hold that the statute is computed from the end of the acts causing injury.

1. Maggay v Nikitko 117 Conn 206 (1933)

   This case held continuing loss of affections by acts of adultery meant a partial loss of affection and the statute applied from the end of the acts.

2. Giambozi v Peters 127 Conn 380 (1940)

   This case held that injury due to continuing medical treatment were subject to statute of limitations from the completion of the treatment.

3. Handler v Remington Arms 144 Conn 316 (1957)

   This case held damages due to defective cartridge due to continuing negligent exposure the statute of limitations was not applicable.

4. Ricciuti v Voltarc Tubes 277 F ed 869 (1960)

   A lower federal court coming before Handler, supra, was reversed by the Second Circuit Court of Appeals to be consistent with Handler.

5. Rogers v White Metal Rolling and Stamping Corp
249 F 2d 262 (1957)

The Second Circuit Court of Appeals reversed a lower federal court to make the decision consistent with Handler, supra, and to hold the statute of limitations did not bar an injury due to a defective ladder due to continuous exposure to its defective condition.

ALL STATE AND FEDERAL CASES SINCE HANDLER HAVE FOLLOWED THE "CONTINUING INJURY" RULE IN REJECTING THE STATUTE OF LIMITATIONS AS A DEFENSE.

6. Calve Brothers v Mass Bonding & Insurance Co
22 Conn Supp 44 (1959)

Injuries due to dynamite left in rock from 1951 to 195 was held not subject to a statute of limitations defense.

Can there be any practical difference between injuries caused by dynamite concealed in rock from 1951 to 1956 and injuries caused by a legal opinion concealed pursuant to an anti-trust conspiracy from 1970 to 1976?

RESPECTFULLY SUBMITTED

STANLEY V. TUCKER

CERTIFICATE OF SERVICE BY MAIL

I, STANLEY V. TUCKER, hereby certify that I served the above Brief on the Defendants herein by depositing a true copy postage pre-paid addressed as below in the U. S. mails at Hartford, Conn.: on May 23, 1976:

Thomas F.Parker
799 Main Street
Hartford, Conn

Jon S. Berk
39 Lafayette St
Hartford, Conn

I 15

STANLEY V. TUCKER

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER Plaintiff	:	
v.	:	CIVIL ACTION NO. H-75-359
MECHANICS SAVINGS BANK, et al Defendants	:	

STATE OF CONNECTICUT)
: ss. Hartford
COUNTY OF HARTFORD)

Personally appeared, GEORGE G. JOHNSON, who being duly sworn, deposes and says:

1. That he was the Vice President of the Mechanics Savings Bank until March 1, 1972 and was the senior officer of the bank concerned with the construction loan made to the plaintiff, Stanley V. Tucker, which loan is the basis for this action.

2. That Mechanics Savings Bank chose the law firm of Gilman & Marks to represent the bank in connection with all work necessary for the construction mortgage loan, i.e. to do the title work, mortgage paper preparation, closing, etc.

3. That the bank chose the law firm of Gilman & Marks because the bank had confidence in that firm's ability and competence to do the requisite legal work for what is a complex undertaking.

4. That Mechanics Savings Bank (nor any of its personnel) took no part in determining the fee which was to be charged by Gilman & Marks for that work.

5. That the plaintiff, Stanley V. Tucker was informed from the outset that the law firm of Gilman & Marks

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was doing the legal work for the Mechanics Savings Bank and that he, Stanley V. Tucker, was required to pay for their charges as a condition for the loan.

6. Plaintiff, Stanley V. Tucker, was also informed from the outset that he was free to get his own attorney to represent him in the transaction if he so desired.

7. That to the best of my recollection, the plaintiff did not ask that the necessary legal work be done by bank personnel nor did he ask that attorneys of his choice be engaged to do the necessary legal work.

8. That disbursement of the final installment of the construction loan proceeds was not paid over to the plaintiff, Stanley V. Tucker, because the title was not clear by June 15, 1970, nor were other terms of the commitment and mortgage satisfied as of that date. These were conditions precedent for the disbursement of such funds.

9. That all requests by the plaintiff for disbursement of these funds were made (and the refusals to make same) by no later than the fall of 1970.

10. That I have read the allegations of the complaint in this action and the essential allegations thereof I know are untrue.

George G. Johnson

Subscribed and sworn to before
me this 19th day of April, 1976.

Notary Public

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff	
v.	
MECHANICS SAVINGS BANK, ET AL Defendants	CIVIL ACTION NO. H-75-359

MOTION TO DISMISS UNDER RULE 12(b)

The defendant, Mechanics Savings Bank, moves, pursuant to Rule 12(b) for judgment dismissing the complaint. This action was was commenced by the filing of the complaint on November 5, 1975. This motion to dismiss is based upon the applicable statutes of limitation. (Four years, 28 U.S.C. §15b as to the action based upon the federal anti-trust acts and three years, §35-40, C.G.S. as to the action based on the Connecticut anti-trust act).

In support hereof, plaintiff files the affidavit of Ernest C. Wignall and George G. Johnson attached hereto. and plaintiff's answers to certain interrogatories filed March 29, 1976 as on file. [For convenience, copies of part of plaintiff's response to interrogatories are attached hereto as Exhibit C.]

Dated at Hartford, this 30th day of April, 1976.

Thomas F. Parker
Gross, Hyde & Williams
799 Main Street
Hartford, Connecticut
Attorneys for Mechanics Savings Bank

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff	
v.	
MECHANICS SAVINGS BANK, ET AL Defendants	CIVIL ACTION NO. H-75-359

STATE OF CONNECTICUT)
: ss. Hartford
COUNTY OF HARTFORD)

Personally appeared ERNEST C. WIGNALL, who being duly sworn, deposes and says:

1. That I am the Senior Vice-President--Loans of the Mechanics Savings Bank;

2. That I came to the Mechanics Savings Bank in the capacity of Vice-President in December, 1971 and that since April of 1972 I have been the officer in charge of mortgage loans;

3. That I am familiar with the file of the plaintiff, Stanley V. Tucker, regarding construction mortgage loan No. 28430-6 which is the subject of this action;

4. That to the best of my knowledge, information and belief, plaintiff has made no request to any personnel of this bank for disbursement of the $12,800 which represents the final advance or take-down of the construction mortgage during the period recounted above, i.e. since my coming to the bank in December of 1971 until his letter dated September 19, 1975;

5. That under the terms of the commitment and mortgage, the final advance had to be disbursed to the plaintiff by no later than June 15, 1970;

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6. That the final advance was not disbursed to him because the conditions precedent in the mortgage deed and note had not been completed;

7. That the Mechanics Savings Bank took no part in the establishment of the legal fees paid to Gilman & Marks;

8. That the law firm of Gilman & Marks represented Mechanics Savings Bank in the mortgage transaction and charged $473.75 plus disbursements;

9. That Gilman & Marks' bill of $799.25 (fee--$473.75 and miscellaneous out-of-pocket disbursements--$325.50) was paid on May 19, 1969 pursuant to written authorization of Stanley V. Tucker dated May 16, 1969. (copy attached as exhibit to this affidavit)

10. That since the Fall of 1970 Gilman & Marks has done no legal work on this mortgage, nor has plaintiff been charged for any legal work since that charged him on May 16, 1969 and which was paid on May 19, 1969.

Ernest C. Wignall

Subscribed and sworn to before me this 5th day of May, 1976.

Notary Public

My commission expires Dec. 31, 1977

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER Plaintiff	:	
v.	:	CIVIL ACTION NO. H-75-359
MECHANICS SAVINGS BANK, et al Defendants	:	

STATE OF CONNECTICUT)
: ss. Hartford
COUNTY OF HARTFORD)

Personally appeared, GEORGE G. JOHNSON, who being duly sworn, deposes and says:

1. That he was the Vice President of the Mechanics Savings Bank until March 1, 1972 and was the senior officer of the bank concerned with the construction loan made to the plaintiff, Stanley V. Tucker, which loan is the basis for this action.

2. That Mechanics Savings Bank chose the law firm of Gilman & Marks to represent the bank in connection with all work necessary for the construction mortgage loan, i.e. to do the title work, mortgage paper preparation, closing, etc.

3. That the bank chose the law firm of Gilman & Marks because the bank had confidence in that firm's ability and competence to do the requisite legal work for what is a complex undertaking.

4. That Mechanics Savings Bank (nor any of its personnel) took no part in determining the fee which was to be charged by Gilman & Marks for that work.

5. That the plaintiff, Stanley V. Tucker was informed from the outset that the law firm of Gilman & Marks

was doing the legal work for the Mechanics Savings Bank and that he, Stanley V. Tucker, was required to pay for their charges as a condition for the loan.

6. Plaintiff, Stanley V. Tucker, was also informed from the outset that he was free to get his own attorney to represent him in the transaction if he so desired.

7. That to the best of my recollection, the plaintiff did not ask that the necessary legal work be done by bank personnel nor did he ask that attorneys of his choice be engaged to do the necessary legal work.

8. That disbursement of the final installment of the construction loan proceeds was not paid over to the plaintiff, Stanley V. Tucker, because the title was not clear by June 15, 1970, nor were other terms of the commitment and mortgage satisfied as of that date. These were conditions precedent for the disbursement of such funds.

9. That all requests by the plaintiff for disbursement of these funds were made (and the refusals to make same) by no later than the fall of 1970.

10. That I have read the allegations of the complaint in this action and the essential allegations thereof I know are untrue.

George G. Johnson

Subscribed and sworn to before
me this 19th day of April, 1976.

Notary Public

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Mechanics Savings Bank a mortgage loan for the property known as 53 Hamilton Street, Hartford, Conn.

Answer : Believed to be 1968

6. State the manner in which such discussion first took place, ie face to face, by telephone, the name of the Mechanics employee with whom you discussed same, and date and hour of such discussion and the place where it was held.

Answer: Believe such discussion took place in 1968, date and hour unknown, by telephone in Hartford with George .G. Johnson.

---

10. State the name of each employee, officer or agent of the Defendant, Mechanics Savings Bank, that you have had contact with relative to the mortgage loan which is the subject of your complaint, and the date and hour of each such contact, the place where such meeting or contact took place, and the names of each person present.

Answer: Many informal contacts took place by phone or by person with employees such as cashiers, personnel in mortage dept, etc, without any record of name or date or hour. Principle persons contacted as remembered today are described below: All contacts at 80 Pearl unless noted.

George G. Johnson : first contacted in 1968 and met informally in offices during 1968 and 1969 and 1970 from time to time. No record of times.

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Dozens of persons present as meetings on ground floor of the bank, names unknown.

Walter J. Curylo : first contacted in 1968 and met informally in offices during 1968 and 1969 and 1970. No record of times . Dozens of persons present as meetings on ground floor of the bank names unknown.

William J. Anderson: first believed contacted in 1969 only a few meetings usually due to temporary absence of Walter J. Curylo. Dates not recorded. Dozens of persons in bank.

Richard T. Langan : believe only one or two meetings in bank, dates unknown. Dozens of persons in bank. Meeting in 1968 or 1970

EXHIBIT C

mortgage at 49 Pearl Street, Hartford, on May 26, 1969
Also present Thomas A. Bailey

Robert R. Northover: believe all contacts by phone at various times in 1969 and 1970 relative to mortgage releases.

Orville Smith : Contacted in 1969 and 1970 by phone and in person at 80 Pearl Street and 53 Hamilton Street exact dates not recorded. Present at some meetings Walter J. Curylo and / or William J. Anderson.

Ernest G. Wignall: contacted at 80 Pearl Street In person, believe first about 1971 or 1972 and at various times not recorded as to date. Present many people in bank.

Come to MSB Dec '71

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18. If this was done in writing, state the date of the letter and the name of the person at Mechanics Savings Bank to whom said letter was addressed. If said request was made by telephone, state the date and hour of such telephone call, to whom you spoke, and who originated the call, i.e., you or an officer or employee of the Mechanics Savings Bank. If said requrest was made in a face-to-face meeting, state the date and hour of such meeting or meetings, the participants, the place where each meeting occurred.

Answer: This was done face-to-face early in 1969 at
meeting with Walter J. Curlyo and later
discussed by Phone With George G. Johnson.
Location - offices of Defendant 80 Pearl Street.

19. State where, when and how you requested that the mortgage papers be drafted by the Mechanics Savings Bank to whom said letter was addressed. If said request was made by phone state the date and hour of such telphone call, to whom you spoke, and who originated the call, i.e. you or an officer or employee of the Mechanics Savings Bank. If said request was made in a face-to-face meeting, state the date and hour of such meeting or meetings, and the place where each meeting took place.

Answer: same as Interrogatory 18 and same place and time.

23. State the date and hour when you demanded release of the mortgage monies as alleged in the first Sen tence of Para 14 of the complaint. If said demand was made in writing, state the date of the writing, to whom it was addressed. If the demand was made by telephone, state to whom you spoke and the date and time of said telephone conversation and the

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name of the person who originated the call. If the demand was made in a face-to-face meeting, state all persons present at Such meeting, the name of the person or persons who refused the demand made by you, and the date, hour and place of such meeting.

Answer: Demand made orally on phone and in person to Walter J. Curylo and to George G. Johnson. The refusal decision to my knowledge came from George G. Johnson although he may have consulted the President of Mechanics Savings Bank The place was in the offices of Defendant at 80 Pearl Street on or about March 3, 1970.

25. State each time you demanded release of the mortgage monies as alleged in the last sentence of Para 14. If said demands were made in writing, state the date of the writing, to whom it was addressed, and the date of the delivery of each such writing, as best you can determine, to the defendant. If the demands were by telephone, state the date and hour of each such telephone call, the person or persons to whom you spoke, and the originator of such telephone call. If the demands were made face-to-face conversation, state the date and hour of such conversation the place thereof, and the names of the person or persons participating in such meetings State what each person said at such meeting.

Answer: The first two demands covered by Interrogatory 23 above. A number of meetings and phone conversations took place over the years since March 3, 1970 and not all can be reconstructed in such detail. To the best of my recollection and belief below is information asked for.

25. Answer (contin d) :

While a number of contacts with personnel from Mechanics Savings Bank took place from March 3, 1970 to June 15th, 1970 I would not regard those contacts as "demands for the mortgage release" but more as preliminary discussions. However, I claim that on June 15th, 1970 I formally "demanded" release of the remainding mortgage money. and was rejected as follows.

Events Taking Place Before and On June 15th, 1970

On November 30th, 1969 a fire broke out at 53 Hamilton when almost all construction was completed. This fire delayed construction and increased costs and due to delays in mortgage money releases by Mechanics Savings Bank a number of sub-contractors and material suppliers filed liens. Agreements had been reached prior to June 15th, 1970 to release the liens so that title would be "clear" as Gilman & Marks claimed to me (disregarding G. S. 49-3) that without lien releases the liens would be superior to the first mortgage of Mechanics Savings Bank.

Demand For Release

The morning of June 15th, 1970 I repeatedly phoned Thomas A. Bailey to close out the mortgage's last release but no one mysteriously at G & M knew of the whereabouts of Thomas A. Bailey. I then waited in the lobby of Gilman & Marks through the noon hour period but he did not appear. At approx 1:30 pm I saw Thomas A. Bailey in the entrance to 49 Pearl Street and called out to him. On seeing me Thomas A. Bailey ran away

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as fast as he could toward the elevator. I ran after and caught up. I then demanded the mortgage release stating all letters and lien releases had been made. Thomas A. Bailey stated letters from City unimportant but the

25. Answer (continued)

lien releases were vital and he only had one release and that from Connecticut Masonry Contractors. I stated all the lien releases promised long ago and offered to visit the attorneys involved and to bring back the releases and my offer was accepted by Thomas A. Bailey. I then phoned attorneys for Connecticut Bank & Trust Co who stated a lien release would be immediately walked across the street to Thomas A. Bailey. Then I drove a messenger provided by attorneys for the Hartford Cement Co to the offices of the Hartford Cement Co where a lien release was signed and I drove the messenger to 49 Pearl Street where he hand delivered the lien release to Thomas A. Bailey. Then I visited the attorneys for L & M Electric Co and was informed lien release was delivered to Thomas A Bailey some hours before. Then I contacted Walter J. Curlyo of Mechanics Savings Bank by phone demanding mortgage release(time 4:20 pm) and Mr Curlyo stated that a telephone agreement was made between Thomas A. Bailey and George G. Johnson not to make the release and to give me the reason that "Mechanics Savings Bank is tied in on the New Haven computer and the computer shuts down at 3 pm."

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Events From June 15th, 1970 to present date

That after June 15th, 1970 to present date a number of requests or "demands" were made to make the mortgage release and these often ending in dicussions with officials from Mechanics Savings Bank to effect that "a new mortgage must be written, or terms re-written or time extended" and that Gilman & Marks would do legal work as they previously did. (monopolize work at Bar Association fees)

June 29th, 1970: 9: 10 am

Demand For Release

I phoned Mr Alden Smith, Field Inspector for Mechanics Savings Bank as to the release of $2800 in escrow account and final release of $12,800. Mr Aldon Smith stated that he checked other authorities in bank and parking lot must first be paved. I stated this would violate the engineering specification as there was a one year "settlement" period marked on plans to avoid amesite disintegration.

June 30, 1970: 9 am

However, on phone call the next day I agreed to send Mechanics Savings Bank an amendment to the specification to be signed.

July 3, 1970 10:20 am

Demand For Release

I talked by Phone to Walter J. Curlyo who stated Mr George G. Johnson refused to sign the amendment to the engineering specification but had agreed to send the mortgage to the loan committee for approval for modification with new legal work (Bar Association fee schedule).

K12

October 6, 1970: A letter was received from George G. Johnson that a modification of the mortgage could be made by the bank's attorneys (Gilman and Marks) at added legal expense and costs to me.

October 9th, 1970: I wrote Mr George G. Johnson accepting his offer to modify the mortgage at added legal expenses by Gilman & Marks.

October 13, 1970: Mr George G. Johnson wrote to me that before incurring legal costs on a mortgage modification other requirements should first be completed such as amesite parking lot, and release of all attachments.

November 19, 1970: Mr Robert R. Northover, Asst Treasurer for Mechanics Savings Bank, wrote to me that the $2560 in escrow would be released as amesite work was now completed on delivery of release of attachment.

December 21, 1970: I wrote to Mr Northover enclosing a release of the attachment and requesting the $2560 in escrow.

Domand For Release

June 10th, 1971: I wrote Mr George G. Johnson to explore re-financing of the existing loan.

June 18th, 1971 at 80 Pearl Street, offices of Mechanics Savings Bank from 3:15 to 3:30 pm I discussed a possible refinancing with Mr Walter J. Curlyo. Mr Curlyo stated that liens prevented releases despite the statute 49-3 on advice from Gilman & Marks as Gilman & Marks stated they could find no court cases interpreting the statute and thus the release could not be made and new financing could not be placed due to liens.

Demand For Release

K13

January 12, 1972: I phone Walter J. Curlyo and talked from 11:40 to 11:50 am about a possible re-financing of 53 Hamilton Street. Mr Curlyo agreed to send me forms to fill in and we discussed taxes, vacancy and the rent schedule.

Demand For Release

March 15, 1972: I met with William Anderson, Loan Officer for Mechanics Savings Bank at 80 Pearl St from 3 to 3: 30 pm and we discussed a possible re-financing, taxes, photos and inspection report made by Mr Aldon Smith, interest rates,etc. Mr Anderson discussed many problem factors in making loans on commercial property in Hartford.

Demand For Release

Sept 19th, 1975: I sent a demand letter to Mechanics Savings Bank that the continuing unavailability of the final $12,800 release was causing great damage to me and unless the release made suit would be filed under the Anti-trust Laws.

Demand For Release

Sept 23, 1975 A letter was received from Mr Ernest C. Wignall, Senior Vice President for the Mechanics Savings Bank, in response to my letter of Sept 19th, 1975.

Sept 23, 1975: I answer by letter Mr Wignall to the effect that his letter was read as a denial of my demand for the release of the mortgage funds. and that an anti-trust suit for damages would be started.

K14

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff v. MECHANICS SAVINGS BANK, ET AL Defendants	CIVIL ACTION NO. H-75-359

DEFENDANT, MECHANICS SAVINGS BANK'S, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS-- STATUTE OF LIMITATIONS

I.

INTRODUCTION

The defendant Mechanics Savings Bank's motion to dismiss is predicated on the statutes of limitation. The complaint purports to allege anti-trust violations. The statute of limiations for violation of the federal anti-trust acts is four years, 28 U.S.C. §15b. For violation of the dependent Connecticut anti-trust cause of action, it is three years. Conn. Gen. Stat. §35-40.

II.

FACTS

The requisite fact basis is relatively simple. In 1968, plaintiff requested the Mechanics Savings Bank to grant him a construction loan to build an apartment. After some negotiation, the Mechanics Savings Bank agreed to make such a loan in the amount of $64,000. The loan terms and conditions were extensive. The loan was to be secured by a

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mortgage on plaintiff's property located at 53 Hamilton Street, Hartford. Mechanics Savings Bank engaged the law firm of Gilman & Marks to handle the necessary legal work for it (Mechanics Savings Bank). Plaintiff was told that Gilman & Marks was representing the Mechanics Savings Bank and that Gilman & Marks' charges had to be paid by the plaintiff.

The mortgage loan closed on May 16, 1969. Plaintiff, by letter dated May 16, 1969, authorized the Mechanics Savings Bank to pay Gilman & Marks for its charges. On May 19, 1969, Mechanics Savings Bank did in fact pay Gilman & Marks out of the loan proceeds. The mortgage proceeds were to be disbursed in take-downs or advances corresponding with stipulated steps in the progress of construction. Under the terms and conditions of the loan arrangement, the final $12,800 take-down had to be made by June 15, 1970. Due to plaintiff's failure to meet certain conditions precedent therefor, the money was not disbursed to plaintiff. It has never been.

This action was commenced on November 5, 1975 by the filing of the complaint with the clerk of this Court.

III.

DISCUSSION

The nub of plaintiff's complaint (the complaint is hardly the essence of clarity) appears to be that Mechanics Savings Bank and Gilman & Marks had some illegal arrangement as to who would do the legal work and the setting of the fee for same. While we do not agree in any way with plaintiff's allegation re same, it is clear that even if plaintiff's version is correct, the operative events occurred before,

L2

Secondly, plaintiff complains about the failure to pay out to him the final take-down advance of $12,800. Plaintiff claims this was due him on June 15, 1970. The failure to pay over this $12,800 on June 15, 1970 is the second aspect of wrongdoing relied upon by plaintiff. The delict charged occurred (didn't occur) on June 15, 1970. This was more than four years before the commencement of the action.

The applicable statute reads:

> "Any action to enforce any cause of action under Sections 15 or 15a of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section and sections 15a and 16 of this title shall be revived by said actions." 28 U.S.C. §15b

Plaintiff has alleged a continuing relationship exists between him (plaintiff) and the defendant Mechanics Savings Bank. See Complaint, Paragraph #7. While this may be true--plaintiff continues to owe Mechanics Savings Bank the money borrowed and to repay same, it has no effect on the matter in issue. The wrongs asserted by plaintiff were over and done with as of at least June 15, 1970. Plaintiff claims he was due that last take-down on June 15, 1970. Even if it be true that he made requests daily since then for the disbursal thereof, that does not alter the commencement of the period of limitation. [Note even plaintiff states he had not requested the disbursal of the $12,800 since June 29, 1970 until September 19, 1975. See Plaintiff's Response to Interrogatories, No. 25.]

The statute began to run when the plaintiff says he was rightfully due the $12,800. Subsequent requests, demands, threats or perorations for the disbursement of these moneys do not start the limitation period anew. A simple analogy neatly demonstrates the point: If the

defendant Mechanics Savings Bank had loaned plaintiff $12,800, evidenced by a note which became due and payable on June 15, 1970, the bank could not defer the commencement of the limitation period to some later date when it (Mechanics Savings Bank) demanded payment of plaintiff. If this were so, a limitation period would never be effective, since by merely making demand, the period of limitation would be rejuvenated--thus abolishing the statute of limitations.

The Supreme Court has defined the period of limitations in an anti-trust action in Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 (1971). In that action Hazeltine had brought a patent infringement action against Zenith. That action began in 1959. In 1963 Zenith filed an anti-trust counterclaim. The trial court indicated it would allow damages to Zenith on its counterclaim. Part of these damages arose out of acts which occurred prior to 1959. Hazeltine then claimed that the damages from the pre-1959 acts were barred by the four-year statute of limitations. Hazeltine contended that the statute of limitations permitted "the recovery only of those damages caused by overt acts committed during the four-year period." The Supreme Court did not agree. It stated:

> The basic rule is that damages are recoverable under the federal antitrust acts only if suit therefor is 'commenced within four years after the cause of action accrued,' 15 U.S.C. §15b, plus any additional number of years during which the statute of limitations was tolled. Generally, a cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business.

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> . . . This much is plain from the treble-damage statute itself. 15 U.S.C. §15. In the context of a continuing conspiracy to violate the antitrust laws, such as the conspiracy in the instant case, this has usually been understood to mean that each time a plaintiff is injured by an act of the defendants a cause of action accrues to him to recover the damages caused by that act and that, as to those damages, the statute of limitations runs from the commission of the act. . . . However, each separate cause of action that so accrues entitled a plaintiff to recover not only
>
> those damages which he has suffered at the date of accrual, but also those which he will suffer in the future from the particular invasion, including what he has suffered during and will predictably suffer after trial. . . . Thus, if a plaintiff feels the adverse impact of an antitrust conspiracy on a particular date, a cause of action immediately accrues to him to recover all damages incurred by that date and all provable damages that will flow in the future from the acts of the conspirators on that date. To recover those damages, he must sue within the requisie number of years from the accrual of the action. On the other hand, it is hornbook law, in antitrust actions as in others, that even if injury and a cause of action have accrued as of a certain date, future damages that might arise from the conduct sued on are unrecoverable if the fact of their accrual is speculative or their amount and nature unprovable. . . ." (underlining supplied) [citations omitted] Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 337, 339, 349.

In the instant case, all acts, overt or otherwise, occurred well over four years before this suit was commenced. There is no continuing conspiracy. In fact, plaintiff does not even allege that. The only allegation which introduces any "continuing" aspect is the allegation in the complaint that he and Mechanics Savings Bank are in an ongoing relationship because of his obligation to make monthly payments on the mortgage.

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There has been no legal work done by Gilman & Marks regarding this mortgage since the Fall of 1970, see Complaint, ¶7, Wignall Affidavit ¶10, and Bailey Affidavit ¶11. On the refusal to disburse aspect, it is clear that the alleged wrong and injury occurred on June 15, 1970. As to the "illegal fee conspiracy", any acts pertaining to it were completed and the injury inflicted by the date of payment, May 19, 1969. Later legal work done by Gilman & Marks was done in the Fall of 1970. There was no charge for it. Even the Fall of 1970 is beyond four years before this action. While defendant, Mechanics Savings Bank realizes that in Zenith the court intimated that damages not provable at the time the cause of action arose are not barred by the statute of limitations, the injury, if any, inflicted upon the plaintiff here occurred in 1969 and/or 1970. The resultant damages were suffered at the same instance. The damages arising therefrom were immediately determinable. Therefore the allusions in Zenith to causes of action accruing from the infliction of future damages is not germane to this case. See Zenith at 339, 340.

There is no continuing conspiracy here. The alleged wrongs occurred in 1969 and 1970. The damages, if any, that were inflicted upon plaintiff were suffered immediately. Therefore, the cause of action accrued in 1969 and 1970. The period of limitation therefore commenced by no later than mid-1970. It had expired well over a year prior to the commencement of this action.

As to the cause of action based upon the Connecticut anti-trust law, what has been stated above pertains. Of course, the telling point is that the period of limitation is one year shorter and therefore commencement of this action was barred well over two years before this action was commenced.

IV.

SUMMARY

It is respectfully submitted that this action is barred by the statute of limitations. The point raised is so obvious that discussion even as lengthy as that contained herein is probably not necessary. Based upon the affidavits of all parties, it is abundantly clear that the cause complained of and the injury supposedly suffered by plaintiff occurred in 1969 and 1970. Defendant, Mechanics Savings Bank respectfully submits that this action should be immediately dismissed.

The defendant, Mechanics Savings Bank, also respectfully requests that it be given the opportunity to file further briefs, etc. in the event plaintiff raises some questions deemed worthy of discussion on this issue.

Thomas F. Parker
Gross, Hyde & Williams
Attorneys for defendant,
Mechanics Savings Bank
799 Main Street
Hartford, Connecticut 06103

Dated at Hartford, Connecticut this 5th day of May, 1976.

This is to certify that I have this day served a copy of the foregoing upon Stanley V. Tucker, Box 35, Hartford, Connecticut and on Gordon, Muir & Foley, 39 Lafayette Street, Hartford, Connecticut 06106 by depositing same in the United States Mail, Postage prepaid.

Thomas F. Parker

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff. -v- MECHANICS SAVINGS BANK ETAL Defendants	C. A. No H 75-359 PLAINTIFF'S BRIEF IN OPPOSITION MOTION TO DISMISS BY MECHANICS SAVINGS BANK
	May 7th, 1976

* * * * * * * * * * *

The Plaintiff, STANLEY V. TUCKER, hereby opposes the motion to dismiss by Mechanics Savings Bank on grounds as follows:

I. The Motion to Dismiss is Untimely and Should Be Denied.

The Federal Rules of Civil Procedure limit for due process purposes the orderly filing of defenses and mandate any motions to dismiss on grounds such as set forth by Defendant, Mechanics Savings Bank, be filed before the responsive pleading. FRCP Rule 12 b "A motion making any of these defenses shall be made before pleading if a further pleading is permitted"

The file discloses the Answer of Mechanics Savings Bank dated April 21, 1976 thus waiving and forever losing the right to make Rule 12 b defenses

II. The Motion to Dismiss is Based on Affidavits and the Only Way this Motion Can be Considered is as A Motion For Summary Judgment and the Plaintiff Opposes On this Basis

Rule 12b FRCP "If on a Motion to Dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment under Rule 56"

"The statute of limitations defense may be raised by a motion to dismiss, but must be pleaded in the Answer. The mere lapse of time does not necessarilly establish the bar of limitations"

Howell v Gray 14 F R Serv 12b.325 Case 1

"Where matters outside the pleadings are considered on the motion to dismiss it should be considered as a motion for summary judgment"

McMillen v Douglas Aircraft Co 90 F Supp 670

M1

III. THE Affidavits on Which Defendant's Motion is Based Are Defective Under Rule 56 and should be Excluded Under Rule 12 b.

Rule 56 e FRCP: "Supporting affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters therein"

-1-

"Affidavits on a motion for summary judgment must state matters admissible in evidence"

Roucher v Traders & General Ins Co 235 F 2d 429

A. The Affidavit of Ernest C. Wignall is inadmissible into the evidence being comprised of hearsay, speculations, based on business records (not personal knowledge), conclusions of law and without foundation. The affidavit is defective on its face as it shows Ernest C. Wignall came to Mechanics Savings Bank in December 1971 and Paragraphs 3, 4, 5,6, 7, 8, 9, and 10 all deal with allegations of events prior to his coming to work for Mechanics Savings Bank.

B. The affidavit of George G. Johnson is inadmissible into the evidence being comprised of hearsay, without foundation of personal knowledge as to allegations, based on business records not entered into the record and not authenticated. Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, are without foundation in personal knowledge dealing with acts or statments by other individuals than George G. Johnson.

THE ABOVE AFFIDAVITS SHOULD BE EXCLUDED FROM THE RECORD UNDER RULE 12 b AND THE MOTION DENIED.

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IV The Defense of Statute of Limitations is Frivolous and Without Merit as the Anti-Trust Statutes provide For Continuing Violations and The Complaint Alleges Continuing Violations.

Since All Defendants separately seek to bring up a statute of limitations Defense the Plaintiff will separately file a Brief in support of Summary Judgment as to this defense and includes by reference herein the same Brief.

PLAINTIFF

STANLEY V. TUCKER

Certificate of Service By Mail

I, STANLEY V. TUCKER, hereby certify that on the 10th day of May 1976 I served the above Brief on the Defendants herein by depositing in the U. S. mails at Hartford, Conn postage prepaid first class addressed: Thomss F. Parker, 799 Main Street, Hartford, Conn and to Jon S. Berk, 39 Layfayette St Hartford, Conn.

STANLEY V. TUCKER

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff	:	
vs.	:	
	:	Civil action No. H75-359
MECHANICS SAVINGS BANK, and GEORGE H. GILMAN, JR., ALBERT J. MARKS, JR., both doing business as GILMAN and MARKS, and THOMAS A. BAILEY	:	
Defendants	:	

ANSWER OF THE DEFENDANTS GEORGE H. GILMAN, JR., ALBERT J. MARKS AND THOMAS A. BAILEY

FIRST CAUSE OF ACTION

1. As to the allegations contained in Paragraphs 1, 2, 3, 5, 9, 15, 16, 17 and 18, these defendants have no knowledge or information sufficient to form a belief, and therefore deny same and leave the plaintiff to his proof thereof.

2. As the allegations contained in Paragraph 4 are not directed to these defendants, they do not plead thereto.

3. As to so much of Paragraph 6 as alleges, "The Plaintiff is a citizen and resident of the state of Connecticut. Defendant, Mechanics Savings Bank, was specially chartered by the Connecticut General Assembly in 1861." these defendants have no knowledge or information sufficient to form a belief, and therefore deny same and leave the plaintiff to his proof thereof. So much of said Paragraph 6 as alleges, "Defendants, George H. Gilman, Jr. and Albert J. Marks, Jr. are law partners doing business as Gilman and Marks with principal office in Hartford and doing business throughout the State of Connecticut." is admitted. As to the remaining allegations contained in said Paragraph 6, these defendants admit that defendant Thomas A. Bailey is an attorney associated with Gilman and Marks and, on occasion, has acted in that capacity for Mechanics Savings Bank.

GORDON,
MUIR AND FOLEY
ATTORNEYS AT LAW
30 LAFAYETTE STREET
HARTFORD, CONN. 06106

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4. As to so much of Paragraph 7 as alleges, "That pursuant to mortgage recorded pursuant to said mortgage commitment, Plaintiff, Stanley V. Tucker, has made monthly payment of principal, interest and taxes to the Defendant, Mechanics Savings Bank from about mid 1970 to the present date the last payment being October, 1973." these defendants have no knowledge or information sufficient to form a belief, and therefore deny same and leave the plaintiff to his proof thereof. So much of said Paragraph 7 as alleges, "The Defendants, George H. Gilman, Jr., Albert J. Marks, Jr., Gilman and Marks, and Thomas A. Bailey have been attorneys for the Defendant Mechanics Savings Bank and responsible for the legal work on said mortgage" is admitted. The remaining allegations contained in said Paragraph 7 are denied.

5. Paragraphs 8, 10, 12 and 13 are denied.

6. As to so much of Paragraph 11 as alleges, "Plaintiff requested that the mortgage be drafted by the defendant, Mechanics Savings Bank, or by its Loan Officers or employees at no cost to the plaintiff as the Mechanics Savings Bank was amply staffed with personel" these defendants have no knowledge or information sufficient to form a belief, and therefore deny same and leave the plaintiff to his proof thereof. The remaining allegations contained in said Paragraph 11 are denied.

7. As to so much of Paragraph 14 as alleges, "and demanded release of the mortgage moneys" and "That over the years plaintiff repeatedly demanded release of said moneys due June 16, 1970" these defendants have no knowledge or information sufficient to form a belief, and therefore deny same and leave the plaintiff to his proof thereof. The remaining allegations contained in said Paragraph 14 are denied.

SECOND CAUSE OF ACTION

1. Paragraphs 1 and 4 are denied.

2. As to the allegations contained in Paragraph 2, these defendants have no knowledge or information sufficient to form a belief, and therefore deny same and leave the plaintiff to his proof thereof.

GORDON, MUIR AND FOLEY
ATTORNEYS AT LAW
90 LAFAYETTE STREET
HARTFORD, CONN. 06106

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3. These defendants plead to Paragraph 3 of the second cause of action the same as they pleaded to Paragraphs six through 18 of the first cause of action.

SPECIAL DEFENSE

1. The First Cause of Action is barred by the applicable Statute of Limitations.

2. The Second Cause of Action is barred by the applicable Statute of Limitations.

These defendants hereby demand trial by jury.

DEFENDANTS George H. Gilman, Jr.
Albert J. Marks, d/b/a
and
Thomas A. Bailey

BY JON S. BERK
Their Attorney

Dated at Hartford, Connecticut
April 9, 1976

Gordon, Muir and Foley
39 Lafayette Street
Hartford, Connecticut 06106

THIS IS TO CERTIFY that I have this day served a copy of the within Answer and Special Defense upon Stanley V. Tucker, Box 35, Hartford, Connecticut and to William A. Taylor, 799 Main Street, Hartford, Connecticut 06103.

JON S. BERK

GORDON,
MUIR AND FOLEY
ATTORNEYS AT LAW
39 LAFAYETTE STREET
HARTFORD, CONN. 06106

N3

v. : CIVIL ACTION NO. H-75-359

MECHANICS SAVINGS BANK, et al :
Defendants :

ANSWER OF DEFENDANT, MECHANICS SAVINGS BANK

1. The allegations contained in Paragraphs 1, 2, 3, 4, and 5 of plaintiff's complaint are denied.

2. The allegations contained in Paragraph 6 are admitted, except that it is denied that Thomas A. Bailey is an attorney, employee and agent for Mechanics Savings Bank.

3. The allegations contained in the first sentence of Paragraph 7 are denied; the allegations contained in the second sentence of said paragraph are admitted; the allegations contained in the third sentence of said paragraph are denied.

4. The allegations contained in Paragraph 8 are denied.

5. As to the allegations contained in Paragraph 9, this defendant has neither knowledge nor information sufficient to form a belief, and therefore leaves the plaintiff to his proof thereof.

6. The allegations contained in paragraphs 10, 11, 12, 13, 14 and 15 are denied.

7. As to the allegations contained in paragraph 16, they are denied, except that this defendant has no knowledge concerning the phrase "and the $12,600 is urgently needed by the plaintiff to consolidate debts."

8. The allegations contained in Paragraphs 17 and 18 are denied.

Dated at Hartford, Connecticut, this 21st day of April, 1976.

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THOMAS F. PARKER

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

STANLEY V. TUCKER, Plaintiff	
v.	
MECHANICS SAVINGS BANK, ET AL Defendants	CIVIL ACTION NO. H-75-359

AMENDMENT TO ANSWER OF DEFENDANT, MECHANICS SAVNGS BANK

The defendant, Mechanics Savings Bank, amends its answer dated April 21, 1976 as follows:

FIRST SPECIAL DEFENSE

The right of action for the cause stated in the complaint did not accrue within four years next before the commencement of this action.

SECOND SPECIAL DEFENSE

The right of action for the cause stated in the complaint did not accrue within three years next before the commencement of this action.

Dated at Hartford, Connecticut, this 28th day of April, 1976.

Thomas F. Parker
Gross, Hyde & Williams
799 Main Street
Hartford, Connecticut 06103

P1

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT
HARTFORD, CONN.

STANLEY V. TUCKER	:	C. A. No H 75-359
-v-	:	March 22, 1976
MECHANICS SAVINGS BANK ET AL	:	ANSWERS TO INTERROGATORIES BY GILMAN & MARKS

Pursuant to local rule 21 Plaintiff answers under oath interrogatories by Defendants dated December 4th, 1975.

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) ss

The undersigned, STANLEY V. TUCKER, being duly sworn deposes and answers the interrogatories as follows based on his best information and belief and where applicable based on information from Town Clerks' Records in Hartford or from his own files:

1. When do you claim the alleged conspiracy or illegal contract came into being?

Answer : The exact date is unknown to me but I believe it to be prior to 1968.

2. State specifically the nature of the alleged conspiracy or illegal contract between the defendants.

Answer: Mechanics Savings Bank had an unwritten "tie in" arrangment requiring Plaintiff (STANLEY V. TUCKER) on accepting a mortgage committment for 53 Hamilton Street to have all legal services and title services done over again at double cost by Gilman & Marks(Defendants) at Bar Association minimum fees

3. Describe specifically each act or omission by defendants, George H. Gilman, Albert J Marks, Jr., D/B/A Gilman and Marks and Thomas A. Bailey, upon which you rely in making the allegations in the complaint.

Q1

Answer : 1. Defendants refused to accept or permit use of title work by Plaintiff's attorney

2. Defendants duplicated title work by Plaintiff's attorney

3. Defendants charged double for title work (in addition for payments to Plaintiff's attorney) and for legal services.

4. Defendant s included in the terms of the mortgage language contrary to the General Statutes leading Plaintiff to belief the terms of the mortgage conformed to the General Statutes of Connecticut.

5. Defendants refused or caused Mechanics Savings Bank to refuse to make mortgage releases on grounds contrary to the General Statutes of Connecticut.

6. When all of the arbitrary and capricious requirements (contrary to the General Statutes of Connecticut) had been met by Plaintiff still Defendants refused to make the mortgages releases

4. Explain specifically in what way each act or omission by defendant Gilman & Marks violates Title 15 of USCode.

Answer : 1. By setting minimum fee for legal services
2. By setting mimimum fee for title services
3. By duplicating costs for legal services
4. By duplicating costs for title work
5. By illegal "tie-in" of attorney services to mortgage
6. By illegal "tie-in" of title serviees to mortgage

Q2

7. By monopolizing attorney services for Mechanics Savings Bank & its customers

8. By monopolizing title services for Mechanics Savings Bank & its customers.

5. State the exact date of each act or ommission by defendant Gilman and Marks as alleged in your complaint.

Answer: Exact dates not precisely known but started about January 1969 and continued to Sept 1975.

6. State the person or persons who committed such acts or omissions on behalf of Gilman and Marks and all persons known to plaintiff who witnessed same.

Answer: The person was Thomas A. Bailey. Witnesses believed to be George G. Johnson, Ernest G. Wignall, Richard T. Langan, Walter J. Curylo, John J. O'Brien, Robert R. Northover, William J. Anderson and Orville Smith, and Stanley V. Tucker.

7. State specifically the basis upon which you maintain that a refusal to release the $12,600 of Paragraph 14 was due to Gilman and Marks' wrongful interpretation of the General Statutes of Connecticut.

Answer: Hand written comments by Judge M. Jospeh Blumenfeld as part of order in federal action to discharge liens by subcontractor on 53 Hamilton Street who was not paid due to Mechanics Savings Bank refusal to make mortgage releases.

8. State specifically how Gilman and Marks wrongfully interpreted such statute.

Answer : Gilman & Marks claimed that if Mechanics Savings Bank make releases after liens were recorded that the liens would have priority.

Q3

9. State whether any further advice and / or work was done by Gilman & Marks after June 16, 1970.

Answer : yes

10. If so, state when and where such advice was given and/or work performed, the nature and substance of such advice and/or work and the persons who gave such advice and/or performed such work and the person to whom such advice was given and/ or for whom such work was done.

Answer: Such work was performed in 1970 to 1975 and was believed performed by Thomas A. Bailey and was done for George G. Johnson and or Ernest C. Wignall and consisted of review of mortgage files and advancing of legal theory that advances could only be made if added title work was done by Gilman and Marks and new mortgage drawn and old mortgage released and all liens cleared with all legal and title work done as a "tie in" arrangment with Gilman and Marks and all done at Bar Association "minimum fee " schedule.

11. State the basis upon which you allege that the work on the mortgage papers, if drafted by Mechanics Bank, would have been at no cost to you.

Answer: The original committment letter listed all terms of the mortgage transaction and had no costs listed for drafting of mortgage papers.

Q4

12. If such a belief is based on the statement of another person. list that personAs name and address, the date such statement was made and whether such statement was written or oral

Answer : See Exhibit "A" annexed to complaint.

13. State the basis upon which you allege that all preparation and drafting of the mortgage was done by para-legals or secretaries of Gilman and Marks.

Answer: Personal observations on repeated visits.

14. Itemize for what service, and the cost of each service, performed by Gilman and Marks for which you were charged $776.00 as alleged in Para 13.

Answer: the figure stands corrected at $799.25 as Follows:

Title Insurance $153.00	Survey $127.50
Secretary of State 3.00	Town Clerk$42.00
Gilman & Marks $473.75	

15. State the name of each employee, or agent of defendant Gilman and Marks that you had contact with relative to the mortgage loan which is the subject of your complaint, the date and hour of each such contact, the placew where such meeting or contact took place, and the name of each person present.

Answer: I do not recall the names and dates of all persons. The place was at the offices of Gilman and Marks, 49 Pearl Street, Hartford, Conn. The person I recall meeting was Thomas A. Bailey and meetings I recall specifically took place on May 16th, 1969 and June 16th, 1970.

Q6

Stanley V. Tucker

STANLEY V. TUCKER

STANLEY V. TUCKER	:	C. A. No H 75-359
-v-	:	March 23, 1976
MECHANICS SAVINGS BANK ET AL	:	ANSWERS TO INTERROGATORIES BY MECHANICS SAVINGS BANK

DISTRICT COURT

Pursuant to local rule 21 Plaintiff answers under oath interrogatories by Mechanics Savings Bank dated December 4, 1975.

STATE OF CONNECTICUT)
) ss
COUNTY OF HARTFORD)

The undersigned, STANLEY V. TUCKER, being duly sworn deposes and answers the interrogatories as set forth below based on his best information and belief and where applicable based on information from Town Clerk's Records in Hartford or from his own files.

1. State your full name, address, social security number and the length of time you have resided at the address given.

Answer: STANLEY VICTOR TUCKER
Apt B4, 963 Capitol Ave, Hartford, Conn (residence)
Box 35, Hartford, Conn 06101 (mail)
approximately 6 years Social S/S No 723-14-3838

2. List any other addresses you have had during past 15 years.

Answer: 130 Newton Street, Hartford, Conn
914 W. Boulevard, Hartford, Conn
Route 5 East Windsor, Conn

3. State by title and name and address of employer, all emplyment held by you during the last ten years.

Answer : No employers. Self Employed.

4. State when you acquired property known as 53 Hamilton St, Hartford, Conn, the name of the person from whom you acquired the same, the purchase price paid for same, and the volume and page in which the deed of acquisition is recorded in the land records of Hartford.

R1

Answer : 53 Hamilton bought in 1966 deed recorded 4-22-66

Purchase from three sisters, REGINA S. RAFFA, GEORGIANNA S. KELLY, and ISABELLE S. CULLEN.

Paid $10,000 plus associated expenses

Deed Recorded in Volume 1162 Page 371

5. State when you first approached and discussed with the Mechanics Savings Bank a mortgage loan for the property known as 53 Hamilton Street, Hartford, Conn.

Answer : Believed to be 1968

6. State the manner in which such discussion first took place, ie face to face, by telephone, the name of the Mechanics employee with whom you discussed same, and date and hour of such discussion and the place where it was held.

Answer: Believe such discussion took place in 1968, date and hour unknown, by telephone in Hartford with George G. Johnson.

7. Describe in detail the information you presented to the Mechanics Savings Bank at such meeting.

Answer : The location, size, number of stories and loan desired for proposed apartment building to be built

8. Describe in detail what information was given to you by the Mechanics Savings Bank at such first meeting.

Answer : Probable interest rate, need for coming in and formally apply via loan officer.

9. State the date, hour and place, and persons involved in each subsequent meeting you had with the Mechanics Savings Bank relative to the construction laan described in the complaint.

Answer : Many informal meetings by phone and in person took place without any record as to the date or time. All of the meetings took place in the offices of the Mechanics Savings Bank at 80 Pearl Street,

R2

Hartford except for a few meetings at 53 Hamilton Street, Hartford to inspect field work. The persons are described under Interrogatory 10 below.

10. State the name of each employee, officer or agent of the Defendant, Mechanics Savings Bank, that you have had contact with relative to the mortgage loan which is the subject of your complaint, and the date and hour of each such contact, the place where such meeting or contact took place, and the names of each person present.

Answer: Many informal contacts took place by phone or by person with employees such as cashiers, personnel in mortage dept, etc, without any record of name or date or hour. Principle persons contacted as remembered today are described below: All contacts at 80 Pearl unless noted.

George G. Johnson : first contacted in 1968 and met informally in offices during 1968 and 1969 and 1970 from time to time. No record of times. Dozens of persons present as meetings on ground floor of the bank, names unknown.

Walter J. Curylo : first contacted in 1968 and met informally in offices during 1968 and 1969 and 1970. No record of times . Dozens of persons present as meetings on ground floor of the bank names unknown.

William J. Anderson: first believed contacted in 1969 only a few meetings usually due to temporary absence of Walter J. Curylo. Dates not recorded. Dozens of persons in bank.

R3

Richard T. Langan : believe only one or two meetings in bank, dates unknown, Dozens of persons in bank. Meeting in 1968 or 1969

John J. O'Brien : believed present at closing of mortgage at 49 Pearl Street, Hartford, on May 16, 1969 Also present Thomas A. Bailey

Robert R. Northover: believe all contacts by phone at various times in 1969 and 1970 relative to mortgage releases.

Orville Smith : Contacted in 1969 and 1970 by phone and in person at 80 Pearl Street and 53 Hamilton Street exact dates not recorded. Present at some meetings Walter J. Curylo and / or William J. Anderson.

Ernest G. Wignall: contacted at 80 Pearl Street In person, believe first about 1971 or 1972 and at various times not recorded as to date. Present many people in bank.

R4

11. State the name and address of the attorney who did the title work for you on the property known as 53 Hamilton Street, Hartford, prior to your contacting the Mechanics Savings Bank relative to construction mortgage described in your complaint and which attorney is referred to in Paragraph 9 of the complaint.

Answer : John J. Narkiewicz, Esq 525 MAIN Street, Hartford, Conn.

12. State the date of said attorney's certificate of title, and the amount you paid said attorney for this title work.

Answer : Believe Certificate in "dead" file and has not been located. Believe dated April 19th, 1966. Believe Paid $150.

13. State the name of that attorney's liability insurance carrier referred to in Para 9 of the complaint.

Answer : American Home Assurance Co.

14. State what the minimum Bar Association fee schedule provides as a minium fee for the work done by the law firm of Gilman & Marks for the work which was actually done by said Gilman & Marks in connection with the construction mortgage which is the subject of your complaint.

Answer:
There may be more than one way of computing the minimum fee but as I compute the fee I come up with $474.00

15. State the amount charged you by Gilman & Marks for the work performed by them in connection with the construction mortgage described in your complaint.

Answer: $473.75

16. State the name of the plaintiff's attorney described in Paragraph 9 of the complaint.

Answer : JOHN J. NARKIEWICZ

17. Did you request Mechanics Savings Bank to permit your attorney to do the title work, etc., referred to in the complaint. State when and how your informed Mechanics Savings Bank, if you claim you did, that you desired to use your "own attorney" for the title work.

R5

Answer: Yes, I orally requested of Mechanics Savings Bank that I wanted to save money on title search by having prior attorney "up date" his Certificate of Title. This was done in early 1969 I do not have record of the date.

18. If this was done in writing, state the date of the letter and the name of the person at Mechanics Savings Bank to whom said letter was addressed. If said request was made by telephone, state the date and hour of such telephone call, to whom you spoke, and who originated the call, i.e., you or an officer or employee of the Mechanics Savings Bank. If said requrest was made in a face-to-face meeting, state the date and hour of such meeting or meetings, the participants, the place where each meeting occurred.

Answer: This was done face-to-face early in 1969 at meeting with Walter J. Curlyo and later discussed by Phone With George G. Johnson. Location - offices of Defendant 80 Pearl Street.

19. State where, when and how you requested that the mortgage papers be drafted by the Mechanics Savings Bank to whom said letter was addressed. If said request was made by phone state the date and hour of such telphone call, to whom you spoke, and who originated the call, i.e. you or an officer or employee of the Mechanics Savings Bank. If said request was made in a face-to-face meeting, state the date and hour of such meeting or meetings, and the place where each meeting took place.

Answer: same as Interrogatory 18 and same place and time.

R6

20. Describe the legal services performed by Gilman & Marks on the mortgage transaction referred to in the complaint.

Answer: Drafting of mortgage, search of title and closing attendance.

21. State the basis upon which you allege that a reasonable sum for the legal services performed by the law firm of Gilman & Marks would be $100 as alleged in Para 13 complaint.

Answer: I use the same Hartford County Bar Association minimum fee schedule but I omit the extensive work done by Mechanics Savings Bank and include only up date of the Title. Computations are:

Draft Mortgage	$35.00	
Closing	$40.00	
UpDate Title	$25.00	Total $100.00

22. State the date upon which you had complied with all terms of the mortgage as alleged in the first sentence of Para 14 of the complaint.

Answer: On or about March 3, 1970.

23. State the date and hour when you demanded release of the mortgage monies as alleged in the first Sen tence of Para 14 of the complaint. If said demand was made in writing, state the date of the writing, to whom it was addressed. If the demand was made by telephone, state to whom you spoke and the date and time of said telephone conversation and the

R7

name of the person who originated the call. If the demand was made in a face-to-face meeting, state all persons present at Such meeting, the name of the person or persons who refused the demand made by you, and the date, hour and place of such meeting.

Answer: Demand made orally on phone and in person to Walter J. Curylo and to George G. Johnson. The refusal decision to my knowledge came from George G. Johnson although he may have consulted the President of Mechanics Savings Bank The place was in the offices of Defendant at 80 Pearl Street on or about March 3, 1970.

24. State specifically the General Statutes of Connecticut, by Title and Section number, which plaintiff alleges in Para 15 the Defendants, Gilman & Marks, wrongfully interpreted.

Answer: Title 49 G. S. 49-3.

25. State each time you demanded release of the mortgage monies as alleged in the last sentence of Para 14. If said demands were made in writing, state the date of the writing, to whom it was addressed, and the date of the delivery of each such writing, as best you can determine, to the defendant. If the demands were by telephone, state the date and hour of each such telephone call, the person or persons to whom you spoke, and the originator of such telephone call. If the demands were made face-to-face conversation, state the date and hour of such conversation the place thereof, and the names of the person or persons participating in such meetings State what each person said at such meeting.

Answer: The first two demands covered by Interrogatory 23 above. A number of meetings and phone conversations took place over the years since March 3, 1970 and not all can be reconstructed in such detail. To the best of my recollection and belief below is information asked for.

R8

25. Answer (continued) :

While a number of contacts with personnel from Mechanics Savings Bank took place from March 3, 1970 to June 15th, 1970 I would not regard these contacts as "demands for the mortgage release" but more as preliminary discussions. However, I claim that on June 15th, 1970 I formally "demanded" release of the remainding mortgage money and was rejected as follows.

Events Taking Place Before and On June 15th, 1970

On November 30th, 1969 a fire broke out at 53 Hamilton when almost all construction was completed. This fire delayed construction and increased costs and due to delays in mortgage money releases by Mechanics Savings Bank a number of sub-contractors and material suppliers filed liens. Agreements had been reached prior to June 15th, 1970 to release the liens so that title would be "clear" as Gilman & Marks claimed to me (disregarding G. S. 49-3) that without lien releases the liens would be superior to the first mortgage of Mechanics Savings Bank.

Demand For Release

The morning of June 15th, 1970 I repeatedly phoned Thomas A. Bailey to close out the mortgage's last release but no one mysteriously at G & M knew of the whereabouts of Thomas A. Bailey. I then waited in the lobby of Gilman & Marks through the noon hour period but he did not appear. At approx 1:30 pm I saw Thomas A. Bailey in the entrance to 49 Pearl Street and called out to him. On seeing me Thomas A. Bailey ran away

R 9

as fast as he could toward the elevator. I ran after and caught up. I then demanded the mortgage release stating all letters and lien releases had been made. Thomas A. Bailey stated letters from City unimportant but the lien releases were vital and he only had one release and that from Connecticut Masonry Contractors. I stated all the lien releases promised long ago and offered to visit the attorneys involved and to bring back the releases and my offer was accepted by Thomas A. Bailey. I then phoned attorneys for Connecticut Bank & Trust Co who stated a lien release would be immediately walked across the street to Thomas A. Bailey. Then I drove a messenger provided by attorneys for the Hartford Cement Co to the offices of the Hartford Cement Co where a lien release was signed and I drove the messenger to 49 Pearl Street where he hand delivered the lien release to Thomas A. Bailey. Then I visited the attorneys for L & M Electric Co and was informed lien release was delivered to Thomas A Bailey some hours before. Then I contacted Walter J. Curlyo of Mechanics Savings Bank by phone demanding mortgage release(time 4:20 pm) and Mr Curlyo stated that a telephone agreement was made between Thomas A. Bailey and George G. Johnson not to make the release and to give me the reason that "Mechanics Savings Bank is tied in on the New Haven computer and the computer shuts down at 3 pm."

R10

Events From June 15th, 1970 to present date

That after June 15th, 1970 to present date a number of requests or "demands" were made to make the mortgage release and these often ending in dicussions with officials from Mechanics Savings Bank to effect that"a new mortgage must be written, or terms re-written or time extended" and that Gilman & Marks would do legal work as they previously did. (monopolize work at Bar Association fees)

June 29th, 1970: 9: 10 am

Demand For Release

I phoned Mr Alden Smith, Field Inspector for Mechanics Savings Bank as to the release of $2800 in escrow account and final release of $12,800. Mr Aldon Smith stated that he checked other authorities in bank and parking lot must first be paved. I stated this would violate the engineering specification as there was a one year "settlement" period marked on plans to avoid amesite disintegration.

June 30, 1970: 9 am

However, on phone call the next day I agreed to send Mechanics Savings Bank an amendment to the specification to be signed.

July 3, 1970 10:20 am

Demand For Release

I talked by Phone to Walter J. Curlyo who stated Mr George G. Johnson refused to sign the amendment to the engineering specification but had agreed to send the mortgage to the loan committee for approval for modification with new legal work (Bar Association fee schedule).

R11

October 6, 1970: A letter was received from George G. Johnson that a modification of the mortgage could be made by the bank's attorneys (Gilman and Marks) at added legal expense and costs to me.

October 9th, 1970: I wrote Mr George G. Johnson accepting his offer to modify the mortgage at added legal expenses by Gilman & Marks.

October 13, 1970: Mr George G. Johnson wrote to me that before incurring legal costs on a mortgage modification other requirements should first be completed such as amesite parking lot, and release of all attachments.

November 19, 1970: Mr Robert R. Northover, Asst Treasurer for Mechanics Savings Bank, wrote to me that the $2560 in escrow would be released as amesite work was now completed on delivery of release of attachment.

December 21, 1970: I wrote to Mr Northover enclosing a release of the attachment and requesting the $2560 in escrow.

Demand For Release

June 10th, 1971: I wrote Mr George G. Johnson to explore re-financing of the existing loan.

June 18th, 1971 at 80 Pearl Street, offices of Mechanics Savings Bank from 3:15 to 3:30 pm I discussed a possible refinancing with Mr Walter J. Curlyo. Mr Curlyo stated that liens prevented releases despite the statute 49-3 on advice from Gilman & Marks as Gilman & Marks stated they could find no court cases interpreting the statute and thus the release could not be made and new financing could not be placed due to liens.

Demand For Release

R12

January 12, 1972: I phone Walter J. Curlyo and talked from 11:40 to 11:50 am about a possible re-financing of 53 Hamilton Street. Mr Curlyo agreed to send me forms to fill in and we discussed taxes, vacancy and the rent schedule.

Demand For Release

March 15, 1972: I met with William Anderson, Loan Officer for Mechanics Savings Bank at 80 Pearl St from 3 to 3: 30 pm and we discussed a possible re-financing, taxes, photos and inspection report made by Mr Aldon Smith, interest rates,etc. Mr Anderson discussed many problem factors in making loans on commercial property in Hartford.

Demand For Release

Sept 19th, 1975: I sent a demand letter to Mechanics Savings Bank that the continuing unawailability of the final $12,800 release was causing great damage to me and unless the release made suit would be filed under the Anti-trust Laws.

Demand For Release

Sept 23, 1975 A letter was received from Mr Ernest C. Wignall, Senior Vice President for the Mechanics Savings Bank, in response to my letter of Sept 19th, 1975.

Sept 23, 1975: I answer by letter Mr Wignall to the effect that his letter was read as a denial of my demand for the release of the mortgage funds. and that an anti-trust suit for damages would be started.

R13

26. State each item of special damages you claim you suffered ascause of defendants wrongful witholding of the $12,600.

Answer : I read this interrogatory as directed at Paragraph 7 of the prayer for relief as the other paragraphs are self-explanatory and break said para 7 into items as follows:

Item 1 - Inability to pay / on time subcontractors and material suppliers involved in construction of 53 Hamilton Street resulting in a number of liens being recorded with law suits filed against myself in the state courts of Connecticut and with two federal law suits filed by myself in the District Court of Connecticut to declare the attachment laws unconstitutional and to declare the liens void. All of these law suits have been completed and all claims settled or discharged or paid as of this date. I claim the sum of $ 8,400 for court costs and legal expenses including my time involved over many years in state court and federal court litigations and in negotiations over settlements.

Item 2 - During the fall of 1969 I planned and expended time and money on a new project at 198 Wethersfield Ave, Hartford for an 18 unit apartment building. Zoning and utilities were satisfactory or in place and financing was available. Blueprints were completed and site investigations carried out. A deposit was paid and Option to Buy Notarized.

R14

26. Answer (continued) :

However because Mechanics Savings Bank refused to release the $12,800 I was forced to abandon this project and if the release had been made as called for by the terms of the mortgage I would have completed this project at a profit normal to that time period of $3,000 per unit or a total of $54,000 which sum I claim as special damages plus rent profit $172,800 (50 yr)

Item 3 - Failure of Mechanics Savings Bank to release the $12,800 caused many debts to be paid slowly over a long period of time and delayed many payments so as to create creditor problems and damages to my business/credit reputation and I claim as damages $25,000.

Item 4 - Failure of Mechanics Savings Bank to release the $12,800 caused certain taxes to become unpaid in Hartford and prevented a settlement so that a foreclosure action is pending in which I can lose an equity in excess of $150,000

Item 5- Failure of Mechanics Savings Bank to release the $12,800 caused certain disputes to arrise with a bank re alleged taxes due on property outside of Hartford and a foreclosure action has started in which I can lose an equity in excess of $200,000

Item 6 - A personal injury claim was agreed to at a settlement figure of $3250 in May 1969. This agreement continued into early 1970 and since the refusal of Mechanics Savings Bank to release the $12,800 prevented payment of the settlement figure the claim was litigated to judgment in the Superior Court of Hartford and a foreclosure action started and I paid out a total of $ 16,036 for attorneys fees court costs, interest, reporter's fees, etc., plus judgment and the costs of the foreclosure. I claim as special damages the sum of $12,786 which is the excess of what I paid out over the $3250 settlement figure that I could not pay as the defendant, Mechanics Savings Bank, refused to make the mortgage releases.

27. State the names and Addresses of all docters whom the plaintiff seen in connection with emotional distress and mental suffering alleged in Paragraph 18 of the complaint.

Answer : Dr Dimlick
Hartford Health Center
56 Coventry
Hartford, Conn

Dr. A. Russell Brenneman
85 Jefferson
Hartford, Conn

R16

28. State the dates of visits to each docter listed in answer to the preceeding interrogatory.

Answer : Dr Dimlick November 7th, 1975

Dr Brenneman November 18th, November 28th, 1975

December 19th & 29th, 1975

29. State what other medical or psychiatric treatemnt plaintiff has received during the last six years.

Answer: No psychiatric treatment. I have not maintained a record of medical treatments during last six years but I recall treatment due to blood clots on lower back due to fall off nephew's bicycle in Florida a few years ago and in addition two occasions of treatment due to falls on ice while skiing and associated medicants to relieve the blood clots or the aches or swelling or the stiffness or aches in muscular joints.

30. State the debts which you owed and which are referred to in Para 17 in which plaintiff claims was unable to pay because of the alleged wrongful withholding of the mortgage funds.

Answer : There is no such allegation in Para 17.

R17

31. Identify the bills you were unable to consolidate as alleged in Para 17 because of the alleged wrongful withdolding of the mortgage funds.

Answer : Debts that I was not able to consolidate are:

1. Personal Injury Elizabeth Ann Bitonti
2. L & M Electric Co
3. Connecticut Mason Contractors
4. Hartford Cement Co
5. Adolph Sirois Carpentry
6. Bailey Agencies
7. Kay Sheet Metal Co
8. Dodd Oil Co
9. Hartford Tax Collector
10. Aiudi & Sons
11. Vernon Miner
12. Batter Lumber
13. Glastonbury Lumber

32. Identify the critical obligations which you were unable to discharge because of the alleged wrongful witholding of the mortgage funds as alleged in Para 17.

Answer: The list is the same as in Interrogatory 31. While some added debts caused difficulties the above list consists of the most important problems. Some of the other accounts are:

1. Hartford Electric Light Co
2. Southern New England Telephone Co
3. Connecticut Natural Gas Co

R18

33. Identify all properties you owned during past six years.

Answer: 53 Hamilton Street, Hartford

121 Allen Place, Hartford

65 Bulkeley Ave, Hartford

963 Capitol Ave, Hartford

38 S. Whitney St, Hartford

69 Amity Street, Hartford

65 Amity Street, Hartford

711 E. Main Street, Torrington

19 Nathaniel Street, Torrington

New Harwinton Road lot , Torrington

Stafford Ave lots, Bristol Mine Road Lots , Bristol

34. State the names of all civil actions to which you have been party and identify same by case caption, court, docket number, and state the names of the attorneys for each party and the names of all pro se parties.

Answer: In conference discussions with counsel for the defendants this interrogatory was interpreted or clarified to mean actions " like this action with Mechanics Savings Bank" I have only one action involving a bank with anti-trust features in the federal courts and one such action in the Superior Court of Hartford.

1.USDC - Conn No H 75-412

STANLEY V. TUCKER v HARTFORD NATIONAL BANK & TRUST CO ET AL

Pro Se Plaintiff

R19

Defense Counsel : Neil E. Atlas Box 479, Bloomfield, Conn

2. Hartford Superior Court No 200117
STANLEY V. TUCKER v HARTFORD NATIONAL BANK & TRUST CO ET AL
Pro Se Plaintiff
Defense Counsel Neil E. Atlas Box 479 Bloomfield, Conn.

35. With respect to each of the debts, obligations and bills referred to in Para 17, identify theperson, firm, or corporation to whom the same was owed, the original amount of same, the basis for same, the present balance, the date and amount of all payments made thereon to date, the schedule of required and amounts of payments.

Answer: This interrogatory is not deemed applicable to the fact situation for most accounts as the accounts were "running accounts" or "open accounts" to which continually or periodic additions were made and also periodic payments made. As a result of the wrong-withholding of the mortgage money by Mechanics Savings Banks certain payments got delayed causing liens, disputes, litigations, compromises, payments and settlements. Upon receipt of an amended or additional interrogatory, if any is deemed needed, I can clarify the disputes. A literal answer is that nothing was originally due when the account was opened and that some accounts are still open today but that nothing is due on accounts closed. The accounts closed are Those listed in answer 31 above numbers 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, and 13 also number 2 of answer 32. The persons or corporations are named in Ans 31 & 32.

R20

36. Describe specifically each act or ommssion of the defendant, Mechanics Savings Bank, upon which you rely in making the allegations in the complaint.

Answer: As I read this question as to causing damages it was the act of conspiring as to monopoly as to attorney services and title work, setting controlled fees for same and wrongfully withholding pursuant to said conspiracy $12,800 in mortgage money due to me.

37. As to each such act, state the date and hour thereof, the persons who did so on behalf of Mechanics Savings Bank and all persons known to you who witnessed same.

Answer : The illegal conspiracy to violate the Clayton and Sherman Anti-Trust Acts is believed to be a continuing one starting before 1968 and still believed to be in continuing existance. The person who carried out most of the acts was Thomas A. Bailey in concert and conspiracy with George G. Johnson and other employees of the Mechanics Savings Bank participated under instructions. The witnesses are the same persons identified in Answer 10 above with the times set forth therein as best known.

38. As to each omission state the date you claim the omitted act should have occurred.

Answer: The $12,800 payment should have taken place on or about March 3, 1970 and again June 15th, 1970 but in my opinion could have taken any time in the past or future as under the terms of the mortgage this money was due to me and the money could be released next week or next month.

R21

39. Do you claim that Mechanics Savings Bank participated in any way in the setting of the fees charged you by the defendant Gilman & Marks? If so describe in detail the defendant Mechanics Savings Bank participation in the setting of the fee charged by Gilman & Marks.

Answer: Yes, Mechanics Savings Bank helped set the fee by refusing to allow use of prior title search and by refusing to allow a choice as to title work or attorney as Mechanics Savings Bank knew Gilman & Marks charged based on Hartford County Bar Association minimum fee schedule.

40. Is the core of your complaint against the defendant, Mechanics Savings Bank, the fact that it required that the necessary title work, etc. in connection with the mortgage loan be done by attorneys of its selection, to wit - Gilman & Marks?

Answer - No.

41. When do you claim the defendant, Mechanics Savings Bank, should have paid over the $12,600 mortgage proceeds, i.e., what was the earliest date you claim they were obligated to turn this money over to you?

Answer: I claim the money was due me March 3, 1970 the date of occupancy under the Certificate of Occupancy from the City of Hartford Building Department. However correspondence from Mechanics Savings Bank is to the effect their inspectors reported the building as completed February 14, 1970 and as apartments had been leased by February 14, 1970 that could also be the first date.

R22

s/
STANLEY V. TUCKER
PLAINTIFF